TERMINATION'S LEGACY

THE DISCARDED INDIANS OF UTAH

R. WARREN METCALF

Termination's Legacy describes how the federal policy of termination irrevocably affected the lives of a group of mixed-blood Ute Indians who made their home on the Uintah-Ouray Reservation in Utah. Following World War II many Native American communities were strongly encouraged to terminate their status as wards of the federal government and develop greater economic and political power for themselves. During this era, the rights of many Native communities came under siege, and the tribal status of some was terminated. Most of the terminated communities eventually regained tribal status and federal recognition in subsequent decades. But not all did.

The mixed-blood Utes fell outside the formal categories of classification by the federal government, they did not meet the essentialist expectations of some officials of the Mormon Church, and their regaining of tribal status potentially would have threatened those Utes already classified as tribal members on the reservation. Skillfully weaving together interviews and extensive archival research, R. Warren Metcalf traces the steps

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CONTENTS

List of Photographs ix
List of Maps xi
List of Tables xiii
Preface xv

INTRODUCTION 1

1 THE JUNIOR SENATOR FROM UTAH 21
2 ERNEST L. WILKINSON AND EIGHTEEN MILLION DOLLARS 49
3 THE THREE-YEAR PROGRAM AND ECONOMIC BLACKMAIL 74
4 UTAH PAIUTES AS WATKINS'S EXAMPLES 101
5 TRIBAL ALLIANCES AND TRIBAL DIVISIONS 124
6 THE BUREAUCRATIC SOLUTION 154
7 JOHN S. BOYDEN'S MAGNUM OPUS 181
8 TERMINATION AND THE PERSISTENCE OF IDENTITY 204

CONCLUSION 234

Notes 245
References 285
Index 295

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R. WARREN METCALF

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PHOTOGRAPHS

following page 116

1. Arthur V. Watkins
2. Francis McKinley, Forrest R. Stone, Reginald ("Rex") O. Curry, and James M. Steward
3. Reva Beck Bosone
4. Ernest L. Wilkinson
5. Ute tribal members, October 1951
6. Uintah Utes at Whiterocks, October 1951
7. John S. Boyden

MAPS

1. Uintah and Ouray Reservation and communities, circa 1950 84
2. Location of the terminated Paiute bands 105

TABLES

1. Data compiled for the 15 February 1954 termination hearing 103
2. Government versus tribal membership identification 121
3. Enrolled membership of the Ute tribe of the Uintah and Ouray Reservation as defined by blood quantum, March 1954 134
4. Tribal and AUC funds expended in the division of assets, as of January 1958 190
5. Comparison of Ute versus total Indian ancestry possessed by those on the mixed-blood roll, March 1956 221

INTRODUCTION

In February of 1954, a joint congressional committee on Indian affairs met in a hearing room in the Capitol to determine the fate of several small groups of Indians located in Utah. The star witness that Monday morning, Glenn L. Emmons, commissioner of Indian Affairs, seated himself, proffered the usual bureaucratic niceties about how pleased he was to attend, and launched into a discourse on his views about the status of Indians in the United States. "I have found," he began, "that there are substantial differences in the more than two hundred tribal groups throughout the United States." Then he reminded the congressmen arrayed before him that the government should not attempt to apply the "same yardstick to these many groups and tribes." "No," said Emmons, each tribe has its "own type of past history of relations with the federal government, and its own ideas about its future development."[1]

The commissioner then offered his advice on how the government could best meet the needs of six tiny bands of Indians in Utah. Two of the bands, Shoshones, lived in remote valleys in western and northern Utah; the other four were Southern Paiutes who lived near the small central and southern Utah towns of Cedar City, Richfield, Santa Clara, and Kanosh. They ranged in number from 140 Shoshones of the Washakie band to 26 Indian Peaks Paiutes. Altogether these six groups totaled only 358 souls. In fact, given their small

numbers, it is remarkable that the government took any notice of them at all.

To the men assembled, the reason for taking such notice seemed obvious enough: these Indians had outgrown the need for federal supervision. Few members of the bands actually resided on reservation land, and even fewer derived any income from it. Only a handful were unable to read and write in the English language. Collectively, these Indians received scarcely any government assistance at all. Why, then, should the government continue to hamper them by insisting that they live as Indians were somehow supposed to live? The time had come to set these Indians free from the restrictions their trustee status entailed.

In 1954, when this hearing took place, the Bureau of Indian Affairs (BIA) was attempting to implement policies that would ultimately halt federal supervision and trust responsibilities over several tribes. These new policies, collectively known by the rather ominous-sounding name "termination," followed the will of Congress as expressed in House Concurrent Resolution 108. Passed the preceding year, this document stated the philosophy succinctly: "Whereas it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, and to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship . . . Indians within the territorial limits of the United States should assume their full responsibilities as American citizens."[2] In due course, more than one hundred tribal groups would be subjected to the termination process. These small Utah Indian bands were merely the first. The question of how they and other Utah Indians became targets of the termination program is the subject of this study.

As a matter of policy, termination proved to be one of the most divisive in the history of federal Indian relations. At the highest levels of the policy debate it became a type of ideological combat, casting contemporaneous policy makers against those of the preceding generation and turning more acculturated Indians against those less so.

Termination also proved disruptive on a practical level as it devolved into a struggle over land and resources, attracting interested onlookers from industry, agribusiness, and state and local government. As has so often been the case in the history of federal Indian policy, the ideas that seemed so fresh and beneficial in Washington took on quite a different appearance to those who saw a way to profit from the process.

All of these ideological elements were present in the Utah termination saga. Most of what transpired in that state came as a direct result of the efforts of a United States senator from Utah, Arthur V. Watkins. As head of the Senate Subcommittee on Indian Affairs, Watkins was the leading congressional advocate of termination policy. Despite Watkins's unique paternal interest in the Indians of his own state, his role in terminating these Indians has been little studied.

Why have scholars avoided the Utah termination saga? The most obvious reason has to do with the relatively small number of Indians involved. The Paiute bands together numbered less than two hundred souls in the rather sparsely populated areas of central and southern Utah. Unlike the Klamaths of Oregon or the Menominees of Wisconsin, they were not members of a well-known tribe, and they lacked material wealth and resources.

However, the Paiutes were not the only Utah Indians to fall victim to Watkins and his program. The majority of terminated Indians in Utah were the so-called mixed-blood Utes. They were members, for the most part, of the Uintah Ute band and were people of mixed racial parentage. Their story has not been told for the simple reason that scholars of American Indian history have not considered them sufficiently "Indian" to merit study. The unfortunate fact is that mixed-blood peoples have been neglected by scholars. As Jennifer S. H. Brown has written, a kind of "racial dualism" is deeply embedded in Anglo-American thought, and this dualism carries over into scholarly dichotomies of "Indian" and "white."[3]

The story of the mixed-blood Utes is problematic for other reasons as well. Although a disproportionate share of the blame for what happened to them must be assigned to Arthur Watkins and his associates, the actual work of terminating the mixed-bloods fell to other Ute Indians and their leaders, assisted by sympathetic BIA of-

ficials and even representatives of the National Congress of American Indians. In other words, the mixed-blood Utes fell victim to the termination process largely as a result of the actions of other Indians and even of those normally considered defenders of Indian rights. Thus the story does not fit the usual pattern of white government and business leaders, assisted by the opportunistic local white population, oppressing the Indians. Moreover, it involves the kind of controversies that scholars sometimes prefer to avoid: rivalries between tribal leaders, petty jealousies, distrust between tribal bands, and a bitter fight over tribal membership. This last factor was especially exacerbated by the windfall of $18 million received by the tribe as a result of a successfully prosecuted claim against the United States. In short, the story of what happened to the mixed-blood Utes defies classification into the usual categories and patterns of American Indian history.

Historians have long debated the causes and effects of termination policy, but the earliest public dialogue originated in the exchanges between the policy formulators themselves and their critics. Using the forum of journal articles and popular magazines, BIA officials and Indian advocates urged reform in government Indian policy. William Zimmerman Jr., the assistant commissioner of Indian Affairs from 1933 to 1950, once argued that the history of government-Indian relations was a succession of waves, moving from one extreme to the other.[4] This was certainly true of the shift in policy from the New Deal administration of John Collier to that of Dillon S. Myer and Glenn L. Emmons in the 1950s. While Collier and his associates sought to preserve Indian culture and establish bilateral relationships with the tribes, Myer and Emmons sought ways of rapidly moving Indians into the mainstream of American society. It is hard to imagine a more radical turnabout in the span of a generation.

One of the most salient historiographical problems, therefore, has been to determine why government policy shifted so dramatically. More recent studies of termination pertain less to the consequences of termination than to the ideological questions involved. These questions seek to re-create the political, social, and cultural milieu of the early 1950s, a time when hard choices had to be made.

During this period, American policy formulators had to decide whether they could justify policies that appeared to encourage cultural divisiveness while simultaneously waging the Cold War. For the many who felt that unity in the face of adversity was a more worthy goal than diversity, assimilation seemed the only rational policy.

A corollary to the "conformity versus diversity" issue is that of "cultural preservation versus desegregation." Many commentators of the 1950s took the position that preserving Indian culture on reservations was really an insidious form of segregation. The early 1950s was, after all, the same era that gave birth to the civil rights movement. But when does cultural preservation become ethnic segregation? Policy advocates in the 1950s were sharply divided by the issue. Defenders of Indian culture, such as John Collier, Felix Cohen, and Oliver La Farge, felt that forced assimilation was tantamount to cultural genocide. Holding to the elusive goal of a pluralistic society, they felt that the preservation of Indian culture should be one of the guiding objectives of Indian policy. Assimilationists, they argued, had a bevy of hidden objectives: they were land-grabbers or, worse yet, skinflints who sought to cut government expenditures at the expense of the Indians. Perhaps the best thing that could be said about them is that they were blindly ethnocentric. A few critics went so far as to imply that the assimilationists were racists.

A frequent target of these accusations, Commissioner of Indian Affairs Dillon Myer attempted to explain the problems and goals of his BIA administration in a 1953 article that appeared in *Social Service Review*. He argued that the traditional governmental role of assisting the Indians in making a living off of the land was an outmoded and even futile objective because if the government "were to develop all the Indian land resources to the fullest extent, we would still find ourselves with a surplus Indian population on those lands of 40 to 50 percent."[5] Myer saw termination as a simple matter of common sense. Moving Indians off tribal land afforded the best solution to the problem of Indian poverty.

Moreover, aside from the rather Dickensian references to the "surplus population," Myer's arguments do have logic to them. When he spoke of the need for Indians to "take over management of their own affairs" and for the government to end the "paternalism" that resulted from federal trusteeship, he managed to sound like a

civil rights advocate.[6] Taken at face value, Myer's foray into the public forum betrayed no trace of bigotry or racism. Yet a more careful reading reveals little appreciation for Indian culture or the potential for self-determination. To Myer, Indians were generally helpless because they were not capable of "elevating" themselves into the white man's world.

Myer's successor as commissioner, Glenn Emmons, also engaged in a little termination propaganda. In a 1955 article subtitled "Give Indians a Chance" (which appeared, appropriately enough, in *Business Week*), he argued that the Indians themselves wanted to "work and live like Americans." His rationale for termination was, like Myer's, primarily pragmatic. Something had to be done about the overpopulation of reservation lands, and his solution was to relocate Indians to urban centers. The picture he painted of this panacea was just a bit too rosy, however, especially when he quoted one manufacturer as saying, "We like our Indian workers. Send us more!"[7]

While Myer and Emmons shrouded themselves in the guise and logic of practical politics, other proponents of termination asserted that the need for this policy was self-evident. The chief advocate of this point of view was Senator Watkins. In a 1957 article on the subject for the *Annals of the American Academy of Political and Social Science,* he placed himself above the fray, claiming that "the matter of freeing the Indian from wardship status is not rightfully a subject to debate in academic fashion, with facts marshalled here and there to be maneuvered and counter-maneuvered in a vast battle of words and ideas. Much more I see this as an ideal or universal truth, to which all men subscribe, and concerning which they differ only in their opinion as to how the ideal may be attained and in what degree and during what period of time."[8] A more ethnocentric perspective would be difficult to imagine. Watkins went on to argue that once the Indians fully understood the termination policy, they would be its greatest champions. He even called termination the "Indian freedom program."[9]

Naturally, the critics of termination responded in kind to these assertions. One of the most potent termination critics was the architect of the Indian Reorganization Act (IRA), John Collier. He obviously had a stake in defending his program, which termination

sought to replace. To Collier, the issue was more philosophical than pragmatic. He contended that Myer, Emmons, and their supporters failed to understand the proper relationship between the government and the Indian tribes. In Collier's view, this relationship was founded on bilateralism—a term that implied mutual consent in policy formulation. He went on to argue that those who would terminate government obligations to the Indians could not employ mutual consent, because they had no appreciation for the cultural distinctiveness of Indians. Collier also claimed that the natural outcome of this policy would be to "disinherit the Indians both materially and culturally." To the terminators, he asserted, Indian culture was both "offensive and contrary to the American way."[10]

This last charge came perilously close to accusing the terminators of being racists. In yet another response to Watkins, one of Collier's philosophical allies, Oliver La Farge, pointed up the essential difference between those who appreciated the value of a pluralistic society and those who would assimilate the Indians whether they liked it or not. La Farge likened this tendency to racism and argued that because the assimilationists lacked an appreciation for diversity, they simply viewed Indians as "dark-skinned" people. Moreover, they could not tell the difference between Indian reservations and the segregated neighborhoods that restricted people of color. Yet genuine discrimination and segregation were everywhere, he said, "even in Salt Lake City, [the] center of Mormonism with its special doctrine concerning the origin of the Indians."[11] This last barb was undoubtedly aimed directly at Watkins, a Utah Mormon.

Of all the contemporaneous critics of termination, however, probably the most prolific writer was Felix S. Cohen, a noted authority on Indian law. In a number of influential articles, Cohen assailed the "Anglo-Saxon pride" he saw at the root of Indian policy. One particularly poignant example appeared in 1952, in an essay entitled "Americanizing the White Man." Cohen contrasted the ethnocentrism of the current BIA with the perspective of the Natives, personified by an elderly Indian who supposedly told the commissioner-designee: "The question is not how you can Americanize us but how we can Americanize you. We have been working at that for a long time. Sometimes we are discouraged at the results. But we will keep trying and the first thing we want to teach you is

that, in the American way of life, each man has respect for his brother's vision."[12]

Cohen's objective in this and similar articles was to advocate cultural pluralism. His ultimate goal, though, was in at least one way strikingly similar to that of termination's proponents—to liberate the Indians from the BIA. Cohen abhorred the bureau's graft, inefficiency, and paternalism, even going so far as to describe the relationship between the bureau and the Indians as "colonialism." In an article published in *Progressive* in 1951, entitled "Colonialism: U.S. Style," he noted that the BIA had inaugurated more than five hundred programs to liquidate bureau activities since 1884, yet during this same period the bureau budget increased from $6 million to approximately $80 million. The harder the BIA tried to put itself out of business, it seemed, the bigger and more entrenched it got.

Cohen was all in favor of dissolving this "colonial" arrangement. The key difference between himself and the terminators, however, was in the method he proposed to accomplish this objective. Rather than simply setting the tribes adrift, Cohen argued, the bureau should hire the Indians and employ them to determine their own affairs.[13] He advocated, in other words, the continuance of the federal trust relationship under the direction of the Indians themselves. Cohen envisioned self-determination to supersede the extant notion of federal guardianship.

Over time, interpretations of the federal trust relationship—the fiduciary responsibility the government holds toward American Indians of recognized tribal groups—have shifted from treaty obligation to guardianship to a recognition of the inherent powers of tribal sovereignty. Nevertheless, the trust relationship remains today as the nexus of federal Indian policy. Near the end of World War II, several influential politicians in and out of Washington concluded that the trust relationship had become anachronistic and argued that the time had come to free Indian wards from regressive federal guardianship. However, these would-be terminationists failed to acknowledge that the trust relationship was (and remains) a bilateral agreement that could only be terminated with the consent of both the federal government *and* a tribe.

The era of active termination that followed, lasting from about

1954 to the early 1960s, was tragic to the degree that Indian tribes and communities were terminated against their will. A number of useful studies have examined the causes and effects of termination on individual tribes. On a macro level, however, there have been relatively few inclusive interpretations of the termination era. The first, Donald Fixico's *Termination and Relocation: Federal Indian Policy, 1945–1960* (1986), offers the consensus view that termination policy logically arose in the late 1940s and 1950s as an attempt on the part of BIA officials to revive the traditional assimilationist goals of the U.S. government. Fixico acknowledges the seeming paradox that termination began during the Truman administration, with its democratic tradition of social justice for minorities and freedom of choice, but he finds a natural explanation in the social upheaval of World War II. He contends that the war created the impetus for change by exposing more Indians to the dominant society and by highlighting the poverty of the reservations. Fixico's conclusion is that a broad consensus formed among Indians, bureau officials, and the public favoring the integration of the Indian population. However, the attempt was tragically flawed, as subjected Indian tribes were greatly damaged by the removal of federal trust oversight.

A second interpretation, argued anew by Kenneth Philp in *Termination Revisited* (1999), does exactly as the title suggests—reinterprets the termination era. Philp concludes that termination was not necessarily the tragedy that critics of the policy have suggested, but rather that it came as a response to the Depression-era IRA. He argues that the IRA "did not meet the needs of the diverse Indian population," provide for "substantial economic progress," or "create a durable political framework for the future," but rather "left a bitter legacy that led to new directions in federal Indian policy." Termination grew up in the shadow of this failed attempt to reform communal and sovereign Indian nationhood. Philp goes so far as to argue that termination took the form of a broad-based social movement to "assimilate Indians and liberate them from federal supervision. It reflected the conservative and nationalist mood of the Cold War era that resonated with the ideologies of individualism and capitalism."[14]

These interpretations have much to recommend them. Both Fixico and Philp capture the essence of the times. There certainly was a

broad social consensus that favored the integration and assimilation of American Indians into national lifeways. And, as Philp contends, there *were* positive aspects to the termination—including the formation of supratribal organizations that began the push toward self-determination. But a closer examination reveals certain lacunae in these interpretations, beginning with the presumption of rationality and coherence in national policy formulation—especially in the realm of Indian policy. It is not cynical to ask how the government suddenly became capable of implementing long-range initiatives while simultaneously coordinating policy across branches, departments, and agencies of government. This description of rational government may accord with the vision put forward by Fixico and Philp, but it does not sound like the one with which most of us are familiar.

Both historians offer explanations of broad social forces that impel men and women to action. But in making their claims, they lose not only much of the human element in this episode, but all of the serendipity as well. Some of the most salient features of termination policy grew out of unplanned, unexpected, and even irrational elements of causation. These elements took the form of people and events that had little to do with the rational evolution of federal Indian policy.

In making this contention, I cite as evidence the statements of the chairman of the Civil Service Committee, Senator William Langer of North Dakota. Langer's committee began an extensive series of hearings in late January 1947 to examine the possibility of reducing the number of federal employees in the executive branch. The hearings set in motion the termination process. Langer pressed the BIA for an assurance that certain tribes were ready for the removal of federal trust status. At this point in his career, the senator had not yet developed a vision or program for Indians—in time, he would become keenly interested in the subject—but at this early date he inferred that he knew little about Indian policy and even less about the bureau. His first questions to William Zimmerman, the assistant commissioner of Indian Affairs, sought to ascertain the nature of the services rendered by the BIA and the exact number of employees required to perform them.

The senator may have had greater knowledge of these matters

than his line of questioning suggests, but not a great deal more. After listening to two days of explanation, Langer demanded to know why "a Chinaman can come in here and be taken care of, or a Jap, any other nationality of people on this earth can come into this country" and be taken care of by existing federal, state, and local services, but not Indians.[15] Langer saw no logic in maintaining a separate department costing millions of dollars for a few hundred thousand people. He wanted to know why the government should not simply abolish the Indian Bureau and be done with it.[16]

Arthur Watkins's service as chair of the Senate Subcommittee on Indian Affairs is similarly instructive. Watkins is often credited as being the prime instigator of termination policy—and correctly so—but he did not come to his chairmanship with a brief on Indian policy. In fact, Watkins received his appointment to chair the subcommittee in his first month in office. Why would the Senate leadership choose a junior senator for this position? Primarily because no one with seniority wanted the job. The subcommittee had been dominated for years by Burton K. Wheeler and his allies, most of whom had become sharply critical of the BIA in recent years. Watkins's appointment reflected both a changing of the guard and the relative lack of importance the Senate attached to Indian affairs.

As Philp suggests, men like Senators Langer and Watkins truly did reflect the conservative and nationalist mood of the Cold War era, with its concomitant ideologies of individualism and capitalism.[17] But they possessed other motivations inconsonant with the actual needs of Indian people. Watkins and his cohort of government policy operatives had no idea of the particulars or the rationale of existing Indian policy, which is not to say that they lacked motivations of their own. Perhaps we should say that broad social forces created a climate conducive to the formulation of termination policy. But implementation fell to a relatively small number of influential people—individuals motivated by divergent ideas of who and what American Indians were and should be.

All of this leads to a more significant point: at the base of the termination issue is an identity question. On the most basic level of causation—that is, on the level of human interaction—termination policy resulted from the collision of ideas about the status and identity of American Indians. The contours of this identity question

emerge when we examine the various sides and proponents of the policy. Every local episode of termination had its own cast of players, although on the national level key individuals remained more or less the same.

This history attempts to illustrate the dynamics of identity politics on the local, state, and federal levels using the attempted termination of the Ute tribe of the Uintah and Ouray Reservation in 1954 as a case study. In the Ute episode, the tribal operatives functioned much as Fixico's World War II thesis might have predicted. In the early 1950s, a small group of veterans dominated Ute affairs and served as tribal leaders. The two most important leaders were college-educated: Rex Curry, chairman of the Ute Tribal Business Committee, was a graduate of Brigham Young University, while Francis McKinley, the tribe's program coordinator, earned his B.A. at George Washington University. Both men were highly acculturated, but they differed greatly in their perspectives on Indians. Curry valued his Indian heritage but believed in the ultimate necessity of assimilation. His loyalties were divided between the Ute tribe and the Mormon Church. McKinley, on the other hand, held more pluralistic views. He favored tribal development programs but strongly opposed Senator Watkins's termination program. McKinley wanted to use tribal resources to provide housing and education programs for the full-blood members of the tribe.

Divergent programs and personnel make it difficult to generalize about the BIA during this transitional period. The commissioner of Indian Affairs, Glenn Emmons, might best be described as a passive supporter of the termination program. Most mid-level and agency personnel harbored decidedly mixed views about the policy. Robert L. Bennett, an Oneida Indian and employee with the BIA's Division of Program, believed that the old paternal relationships most tribes had with the BIA should be eliminated, and thus he agreed with certain objectives of termination policy. But he also believed that the tribes should determine this course of action for themselves rather than succumbing to coercive pressures from Congress or the BIA. Bennett felt that tribes should consent to the process before the bureau could terminate the trust relationship. Given his emphasis on tribal self-determination, Bennett's motivations are readily explained by Philp's interpretation of the era.

Current research increasingly focuses on policy formulation at the state and community levels. Yet local political affairs are often dramatically influenced by national figures, especially when these figureheads are able to draw upon a network of alliances. No interpretation to date has thoroughly examined the personal motivations of Arthur Watkins. And Watkins was not the only one with such motivations: in Utah, several key advocates of termination shared a common religious affiliation. Virtually all were Mormons. Ernest L. Wilkinson, the Ute tribal claims attorney, also served as president of Mormon Church–owned Brigham Young University. John S. Boyden, the Ute tribal attorney who actually wrote the Ute Partitioning Act (the functional termination legislation), held high lay positions in the Mormon Church. H. Rex Lee, a high-level bureaucrat in the BIA and a close ally of Senator Watkins's, was also a Mormon. Wilkinson and Boyden had a profound influence over tribal affairs on the Uintah and Ouray Reservation, and they were greatly assisted by Rex Curry, who was yet another Mormon and natural ally. It may seem that these connections could easily be dismissed with the explanation that a majority of Utah congressmen and -women, attorneys, and bureaucrats have always been Mormons, but that is exactly the point. Mormonism heavily influenced the way these policy makers *thought* about Indians.

The purpose here is not to critique Mormon religious doctrine but rather to illuminate two critical aspects of Mormon beliefs about Indians. First, Mormons have a unique perspective on Indians. Belief in Mormon doctrine is predicated on acceptance of the validity of the Book of Mormon, which purports to be a history of ancient American Christian civilizations. In Book of Mormon cosmology, contemporary American Indians are the fallen and degraded descendants of these enlightened ancient Americans; a corollary doctrine holds that Mormons have a duty to elevate American Indians to their former status as members of God's kingdom on earth. The upshot is that, given these premises, Mormons have never (historically speaking) accepted the legitimacy of indigenous cultures. In a Mormon context, to "elevate" Indians means to convert and assimilate them. Therefore, the fact that Watkins, Wilkinson, Boyden, Lee, and Curry were practicing Mormons is significant in understanding their perspectives on Indians. None of these men

saw any particular value in retaining Native culture, and consequently they were *predisposed* to be assimilationists and terminationists.

It is not far-fetched to say that these five men found common ground in the campaign to terminate the Utes and other Indian tribes. Watkins and Wilkinson (probably the most successful tribal claims attorney in the country at that time) both played leading roles in the termination of other tribes. Although the details of the Ute episode are complex, they can be reduced to three events that defined the future course of Ute tribal history. In the first instance, Senator Watkins sent a letter to tribal chairman Rex Curry in February 1954 which demanded that Ute leaders follow through on promises to implement what he called a "development program"—a BIA euphemism for a termination plan. He threatened that "further legislation for aid or assistance to the Utah Tribe [would] greatly depend upon the activities of the Tribe."[18] In other words, if the Ute leaders failed to produce a termination plan, Watkins would withhold funds won in a recent lawsuit that resulted in a judgment against the United States.

The second event transpired shortly afterward, when Francis McKinley, the tribal development officer, traveled to Washington to attend an emergency conference of the National Congress of American Indians which had been called to formulate a response to the new termination threat. While at the conference, McKinley found a kindred spirit in Robert Bennett. McKinley and Bennett agreed on the importance of subverting Senator Watkins's plan to terminate the Ute tribe, and they invented a strategy to accomplish it. Working in concert with Rex Curry, they decided to sponsor a tribal resolution that would divide the Ute tribe between the full-blood and mixed-blood members and call for the termination of the latter.

The final moment of truth came on 31 March 1954 when roughly four hundred members of the Ute tribe met in General Council and voted in favor of the plan to divide the tribe. Once again the question of identity lay at the heart of the matter, as the largely full-blood Uncompahgre and Whiteriver bands voted to terminate the mixed-blood members of the tribe, most of whom belonged to the Uintah band. The dividing line initially fell at 50 percent Ute ancestry, as determined by blood quantum. Those with less

than 50 percent Ute "blood" were to be removed from the rolls, although ultimately those with 50 percent ancestry were removed as well.

The decision of the tribal General Council gave Senator Watkins the opportunity he needed to sponsor the terminating legislation and usher it through Congress. The Ute Partitioning Act of 1954 (P.L. 671) provided for a division of assets between tribal members and the mixed-bloods, to be followed by the termination of the latter group after a seven-year preparatory period. The number of people destined for termination totaled 490, the vast majority of them members of the Uintah band.

It thus becomes evident how perspectives on Indian identity created both the ideological motivation for termination and a political climate that resulted in the actual division of the Ute tribe. Nearly every study of termination takes note of Senator Watkins and his influence, and most cite his conservative religious orientation as the motive for his actions. Fixico, for example, argued that the senator's Mormon tradition of industry and hard work, as well as his hard-core Republican ideology, convinced him that the Indians had it too easy.[19] Nicolas Peroff noted that Watkins was one of those individuals who already "knew" what was right for the Indians and consequently saw little need for further study of the issue.[20] In fact, Watkins's belief system transcended these explanations. Ever cautious, the soft-spoken and mild-mannered senator had an impenetrable belief in the rightness of his convictions. Occasionally this trait surprised people, as it did Senator Joseph McCarthy when he ran up against Watkins in the McCarthy censure hearings. That Watkins could stand up to the infamous Wisconsin demagogue was evidence enough of his intractability. Against lesser foes, Watkins could be even more formidable. In 1954, the tiny bands of Utah Paiutes and mixed-blood Utes were only beginning to learn how profoundly they would be affected by this aspect of the senator's personality.

Yet understanding Watkins's character is one of the keys to understanding termination, as the Utah story amply demonstrates. The Utah Paiutes and mixed-blood Utes were not terminated solely or even primarily because of postwar social forces or desegregationist pressures. Nor were they terminated because they fit the established criterion of readiness that was supposed to protect Indians

unprepared for such a drastic policy change. They were terminated, first and foremost, because Senator Watkins needed an example for his Indian program. And his Indian program was covertly founded on a bedrock of religious orthodoxy—an orthodoxy that emphasized the necessity of elevating the "fallen" race of American Indians.

Finally, this study addresses the larger questions surrounding the effects of termination policy on Indian identity. The case of the mixed-blood Utes is unique among termination episodes in that unlike the Menominees, Klamaths, Paiutes, and other terminated tribes and bands, the mixed-blood Utes have never been restored to tribal status. The issue of uniqueness gives rise to the question of efficacy: lacking any other recourse, did these people ultimately assimilate? Or, to put the question another way, did Watkins and his accomplices actually succeed in eradicating the Indian identity of individuals subjected to his program? For the senator, termination was never limited to removing federal supervision and eliminating the trust relationship. He saw it as an opportunity to end the *racial* distinctiveness of the Indian people. From this perspective, termination is once again reducible to a question of status and identity.

What happened to the mixed-blood Utes? Did the survivors retain their Indian identity? This question is deeply relevant to the field of racial and ethnic formation. In response to the notion that racial attributes are "primordial" or essentially fixed in nature, social theorists of the circumstantialist school, who believe that ethnicity is rooted in the context and changing material interests of a group, concluded long ago that individuals mobilize into distinct ethnic groups in response to the ascriptive pressures that society places upon them.[21] Racial and ethnic identity form in the context of these circumstances. It is the interactions between these groups and the dominant culture that produce distinct boundaries between ethnic groups and the dominant culture. Frederick Barth, in his landmark study *Ethnic Groups and Boundaries* (1969), concluded that ethnic groups do not depend on the absence of social interaction and acceptance—in other words, ethnic groups do not exist in isolation—but rather persist and grow in the milieu of interethnic contact and interdependence.[22]

Studies of Indian ethnicity often posit arguments descended from this line of reasoning. Joane Nagel, for example, argues that "the rise of American Indian ethnic identification, Indian ethnic mobilization, and Indian cultural revival occur *in spite* of increasing assimilation." Nagel goes on to note that the very processes thought to "reduce or destroy ethnic distinctiveness" have often become the means of regenerating and renewing ethnicity.[23] Other scholars have examined the movements toward supratribal identity and see increasing complexity in patterns of ethnic identification. Stephen Cornell has argued that while urban Indians have increasingly united under the ethnic umbrella to fight for a greater share of the political economy, reservation Indians have moved in the opposite direction, toward subtribal divisions, for essentially the same purposes. While group boundaries followed a gradual trend toward consolidation, the modern reservation system narrowed the options available for conflict resolution and increased the competition for power, influence, and resources.[24]

Such strains were clearly present in the crisis of the mixed-blood Utes. External pressures certainly did not induce Ute tribal members and their affiliated kin into a stronger union and a more distinctive ethnic identity. Instead, the fight for resource allocation tore the Ute tribe apart as competing factions squabbled over questions of birthright and political and cultural legitimacy. It is an old, old story. One could look to almost any Indian reservation at midcentury and find fractious divisions between acculturated elements, frequently but not exclusively mixed-bloods, and the more traditional full-bloods.

Several historians have attributed this process, at least in part, to the artificiality of newly constructed tribal governments under the IRA. James A. Clifton noted, in a study conducted in 1963, the same circumstances of tribal factionalism among the Prairie band of Potawatomi Indians. In a story very similar to the one that forms the subject of this book, Clifton related how disparate bands of Potawatomi Indians were brought together on the old Kaw Reserve in Kansas by government officials who confidently expected them to function as one nation. Instead, conservative traditionalists and more acculturated adoptees and mixed-bloods fought for control and tribal resources. Dissidents on both sides blurred the distinc-

tions between the factions, and a political atmosphere of distrust and instability became normative. A fight over claim settlement money led, exactly as in the mixed-blood Ute case, to a larger battle over membership criteria, only this time the more acculturated membership won. In an interesting reversal of the Ute case, the full-blood conservatives struck back by filing case after case in the federal courts to block the distribution of settlement funds.[25]

Clifton perceives in this episode an interpretative framework that is nearly the opposite of the supratribal identity process. He argues that the imposition of an artificial tribal government, combined with the absence of well-defined norms of community or tribal membership, resulted in confusion, tension, and ultimately factionalism. "Thus," he concludes, "drastic cultural changes have combined with ambiguity in the definition of membership to set the stage for later intra-group conflicts."[26] Rather than coming together as one people, the formative stresses placed upon the Prairie Potawatomi drove them apart.

The old assimilationist hypothesis, still prevalent at midcentury, did not really explain tribal factionalism—it merely took note of its existence as a kind of oppositional tendency induced by conflicts of resource allocation. In part this was because assimilation theory derived from the European immigrant experience and did not fully take into account the centrality of race. The trajectories of the ethnic immigrant experience—which, depending on the perspective of the pioneers of ethnological theory, led in stages of adjustment toward assimilation or followed more pluralistic patterns of societal inclusion of immigrant culture—were not particularly reflective of the collective histories of racial minorities.[27] Native Americans, African Americans, Asian Americans, and other people of color, in various times and places, have resisted, pursued, or adopted strategies of difference toward assimilation into the dominant culture. They have been subjugated, excluded, enslaved, and even subjected to campaigns of extermination. At times they have acquiesced, and sometimes they have even actively campaigned for integration. The final result, however, has seldom resulted in inclusion into the societal whole. African Americans and Indians are particularly susceptible to discrimination based purely on phenotypical racial differences, regardless of the degree of assimilation an individual might possess.

Proponents of the ethnicity paradigm generally assumed that Indian tribes wanted to become integrated into American society. In Watkins's day these pressures took form in the aspirations of returning war veterans who enjoyed greater access and freedom in society than ever before. Watkins believed that these aspirations were shared by all Indian people, or at least that they should be. As he put it, "Following in the footsteps of the Emancipation Proclamation of 94 years ago, I see the following words emblazoned in letters of fire above the heads of the Indians—'These people shall be free!' "[28] The idea that Indians were somehow different from other Americans disturbed the senator and many others of his generation. It seemed as if the melting pot ideal had fallen short in the case of Indian people, unlike so many other minority groups that had successfully assimilated into the mainstream.

We do well to remember that in 1954, integration was a still a progressive ideal—an alternative to the earlier, biological racial paradigm which held that people of color were marked by inherently inferior genetic characteristics. In May of that year the Supreme Court issued its landmark decision in *Brown v. Board of Education*, yet it withheld issuing the implementation decree while considering various alternatives to surmount the anticipated resistance to school desegregation. The liberal consensus believed that integration in its myriad forms, in this case desegregation, held the key to future harmony between the races. Politicians of Watkins's generation never considered other possibilities, because they had in their collective experience the legacy of World War II. The American way, they fervently believed, was the only way: *E pluribus unum*. Recourse to the alternative meant fascism, genocide, and war.

Policy formulators of that day could not understand the extent to which minority groups would pursue rights collectively. In important ways the mixed-blood Ute story is also an example of racial formation, which centers on the notion that racial distinctions are not simply by-products of the negotiation between internal forces of self-identification and external forces of societal ascription, but rather that race is a fundamental dividing line in American culture, law, and society. Racial divisions transcend ethnic considerations in that they do not necessarily lead to assimilation, integration, or even acculturation. Since the advent of the Black Power movement in the

mid-1960s and the subsequent Red Power movement in ensuing years, the tendency of racial minorities has been toward group political mobilization on the basis of *racial* prerogatives. Unlike myriad other racial and ethnic groups engaged in the process of social construction, American Indians have a unique claim on governments based on their collective rights.

In all of this it is important to remember, as Michael Omi and Howard Winant have noted, that race is not an "essence" but rather "an unstable and 'decentered' complex of social meanings constantly being transformed by political struggle."[29] If the Ute termination episode proves anything, it is that American Indian identity remains fundamentally centered on questions of race and social construction, defined and contested in the political arena. This effort to define themselves apart from assigned racial identity based on ancestry and physical distinctiveness makes American Indians more than a racial group. Emerging ethnicity, the power to engage in an ongoing process of self-construction, gives hope to those who, like the mixed-blood Utes, lose the political contest.

1 THE JUNIOR SENATOR FROM UTAH

Using the power of his office as a United States senator and his position as chairman of the Senate Subcommittee on Indian Affairs, Arthur Watkins instigated Indian termination in Utah. That is the one, indisputable fact. It is also true that Watkins had a great deal of help, not only in his home state but also in Congress and in the executive branch. In the aftermath of World War II, several contemporaneous voices called for a reform of Indian policy, most of them noting the incongruity of Indian reservations in the modern world.

Other factors influenced the formulation of termination policy. The reality of Soviet hegemony in Eastern Europe and the ascendancy of Maoist forces in mainland China gave rise to the ominous threat of worldwide Communism. To many Americans, the crisis demanded discipline, fortitude, and, above all, national unity in the face of these new dangers. Defenders of personal and civil liberties sounded like traitors or heretics, and the advocates of cultural diversity, including defenders of Indian rights such as John Collier and Felix Cohen, seemed hopelessly out of step as the nation marched into the Cold War.

These and other factors have been well documented by historians of the termination era. Yet it is also interesting to note that while so many joined the chorus calling for the assimilation of Indians and an end to the Bureau of Indian Affairs, only a few were willing to

draft the legislation and see it through Congress. These few were the true practitioners of termination—Arthur Watkins, E. Y. Berry, Dillon S. Myer, H. Rex Lee, and a handful of others. Watkins might be described as the most ardent believer among them, an attribute that makes him a compelling subject of historical study. He stands almost alone as one who both formulated termination policy and then carried it forward into execution as federal law.

According to a deposition made by Ute tribal attorney John S. Boyden, a man well acquainted with the senator and his motives, Watkins felt that his program could be most effectively advanced by terminating Utah Indians first, as a model or example for Indians in other parts of the country to follow.[1] Watkins wanted to terminate the largest and most powerful tribe in the state, the Ute Indians of the Uintah and Ouray Reservation, but he also undoubtedly knew that tribal leaders and BIA officials would not be sympathetic and that his plans would require influential allies. Unfortunately for the Utes, he found two such men: Ernest L. Wilkinson, one of the most gifted Indian claims attorneys in the United States, and John S. Boyden, the trusted legal counsel for the Northern Ute and Hopi Indians.

It is fair to say that Watkins could not have carried out his program in Utah without the assistance of Wilkinson, Boyden, and, in the end, many others. But he was the primary instigator of the process, and without him termination in Utah would almost certainly have never taken place.

Arthur V. Watkins, called Vivian as a youth because his father was also named Arthur, was born in 1886 and raised in a traditional Mormon home. He spent his early years in the community of Midway, high in Utah's Heber Valley, a site that only twenty years earlier had witnessed much conflict with Northern Utes during Utah's Black Hawk War. No doubt many residents still harbored bitter feelings toward Indians during the period of Arthur's childhood. The Utes were not geographically distant even then, as they had been removed to the nearby Uintah Valley in the 1860s.

At age ten, because his parents decided to move the family to a new farm home in the Uintah Basin near Vernal, Utah, Arthur found himself in much closer proximity to the Utes. It is unlikely that he

experienced much direct contact with the Indians at this point of his life, since he traveled in the exclusionary circles defined by the local church community, or "ward" in Latter-day Saints terminology. Watkins's relatives recalled that Arthur was a bookish child who had little use for farming.[2] After attending the Latter-day Saints Church Academy in Vernal for two years, Arthur left his family and boarded in Provo so he could finish his preparatory schooling at the Brigham Young Academy (now known as Brigham Young University).

Watkins followed the Mormon tradition of serving a church mission; his assignment was to proselytize in the eastern United States. Although at the time of his departure he had little knowledge of religion in general or his own in particular, Watkins had strong convictions about the correctness of his religious beliefs. Many years later he recalled that he enjoyed preaching from street corners and contending with the hecklers. With time and study Watkins eventually became an expert on Mormon theology. His experience as a missionary exposed him to more than religion, however. Life in the large urban environment in the East also stirred him to an early interest in politics. Apparently his belief in the correctness of the Republican Party was as firmly grounded as his religious convictions, because he noted with some pride that he cast his first ballot for a straight Republican ticket. Watkins was also quite pleased that Utah contributed its electoral votes to the newly elected President Taft.[3]

In the fall of 1910, after being released from his mission, Watkins made the unusual decision not to return home to his family. Instead, he stayed on in New York to study law at New York University. Perhaps he was influenced by the fact that while he was away his parents had settled on a new 160-acre homestead in the Uintah Valley. His aversion to farming may have been at the heart of his decision, but it may also be the case that the primitive and isolated location of the new farm on the Uintah and Ouray Reservation repelled him.[4]

Watkins completed his studies at New York University in one year and transferred to Columbia Law School, where he earned his Bachelor of Laws degree in 1912. Later that summer he returned to Salt Lake City, passed the state bar examination, and opened a law practice in his hometown of Vernal. If Watkins felt isolated in Ver-

nal, that situation was soon alleviated. In 1913 he was joined there by his new bride, Andrea Rich, a Mormon from Salt Lake City whom Arthur had met and courted in New York.

Andrea was soon put off by Vernal's small-town atmosphere and by the fact that her husband was at least as devoted to his church and community as he was to her. She was lonely, and on one occasion she ran home from a church dance "wishing that an Indian would grab her" and make her husband sorry for his inattention. But Arthur would never change, and Andrea was the one who adjusted to the Mormon patriarchal style of marriage. As she later put it, "My role was to be that of a wife who relieved him of all unnecessary responsibility in the home and to encourage him to serve his fellowmen whenever and wherever he could."[5]

Over time the affairs of the community increasingly occupied Watkins, although not as a result of his law practice. He found the relatively meager demand for legal services insufficient to support more than one attorney in Vernal, and he was the second. So, beginning in the late spring of 1914, he augmented his income by working as the news editor for the local weekly, the *Vernal Express*.[6] It was here, in the pages of this small-town newspaper, that Watkins first publicly expressed some of his core beliefs about Indians and government. As the news editor, he undoubtedly wrote most of the major stories in the paper (excepting those from correspondents, which were generally credited), thus providing himself the opportunity to editorialize as he saw fit. Since the *Express* lacked an editorial page in these early years, news editors often interjected opinions into the stories themselves.

The evidence suggests that Watkins regularly took advantage of his editorial liberties. Several stories having to do with Indians appeared during his brief tenure as editor, and strong opinions were expressed in virtually every one of them. One front-page article about enforcement of the Indian liquor laws in Tucson, Arizona, for example, took the position that Indians should be punished for buying liquor on the grounds that they were at least as culpable as those selling it. "There are good Indians as well as bad," Watkins editorialized, "and the scalawag Red Man is as much detested by his own race as well as by the whites and should be made to face the law the same as the white man." As he saw it, the guiding principle in these

matters should be equal treatment under the law. Such common-sense laws had been adopted many times by western states without effect, he argued, "because many people of the east including many Indian officials believed in the story book Indians—a much abused creature."[7] It was not the case that the young editor disliked the Indians; he simply felt that they should be treated the same as everyone else.

A few weeks after the editorial on liquor law appeared in the paper, a more significant matter arose on the nearby Uintah and Ouray Reservation when Indian Agent J. D. Martin attempted to enforce an order banning the Utes from holding their annual Sun Dance. The new policy originated with Commissioner of Indian Affairs Cato Sells and was but one example of the bureau's strategy of promoting assimilation by restricting traditional tribal practices. News editor Watkins, however, saw the issue in more fundamental terms. He argued that the Utes had a constitutional right to practice the Sun Dance because they were citizens of the United States and were entitled to the free exercise of their religion. Once again, Watkins preferred to see the question as one in which the Indians were being denied equal treatment because of the bureau's unwarranted paternalism.[8]

That Watkins thought the BIA had outlived its usefulness is evident from other stories appearing in the *Express*. In one case he argued that the old reservation buildings (still in use, apparently) at Fort Duchesne should be ceded to the state, on the grounds that "Utah will no doubt find better use for it than Uncle Sam is getting at the present time."[9] The editorialist clearly felt that bureau buildings, as outdated relics of the nineteenth century, were symbolic of the status of the Indian Bureau itself.

In the summer of 1914, the stated opinions of the *Express* on Indian matters generally reflected those of the community. Life in the Uintah Basin was rugged and new, and a good deal of editorial space was given over to boosterism and railroad promotion. The Uintah and Ouray Reservation had been allotted only nine years earlier, and the resulting surplus lands had been thrown open to the public. Consequently, the prevalent attitude held that Indian reservations were obstacles in the path of progress—both for the Indians and for the newly established white communities. Watkins's parents were

among those who expanded their farm acreage by purchasing surplus reservation lands.[10] It is not surprising, therefore, that Watkins shared the same views as the newspaper constituency, since he was a product of the rural eastern Utah environment. Four decades later, as a United States senator, he would espouse essentially the same views.

After a brief stint at farming in the early 1920s, Watkins moved his family to the Wasatch Front community of Orem and settled into a law practice. In time he attained a measure of financial security as well as prominence in the community for his involvement in local political affairs. His commitment to church work also deepened. In 1929, authorities of the Mormon Church selected him to serve as the president of the Utah Sharon Stake, an administrative organization of several congregations with a combined population of some 2,994 members.

As a community leader Watkins took an active part in several local endeavors, such as the organization of the Sharon Cooperative Educational and Recreational Association and the construction of its theater in Orem. By the mid-1930s he served as director of both the Orem Chamber of Commerce and the Provo River Water Users Association. In the latter capacity he coordinated the effort to organize metropolitan water districts all along the Wasatch Front region and played a key role in the Deer Creek Reservoir project.

In 1936 Watkins attempted to parlay his community experience into public office. He made his first attempt to run for Congress, becoming a candidate for Utah's Second Congressional District. Although he failed in his attempt to unseat the incumbent Democrat, he established a name for himself on the state political scene. In succeeding years he remained active in public and church affairs, and during World War II he actively promoted Utah County as a site for potential war industries. By the end of the war, Watkins was well known in political circles for his persistent efforts at promoting economic development. Perhaps more importantly, the predominantly Mormon population of Orem revered him as president of the Sharon Stake, which placed him at the head of several local congregations. Within the Mormon Church, which operated without a paid clergy, successful community leaders such as Watkins typically served in important ecclesiastical positions. Church leaders gener-

ally reserved the calling of stake president for men judged to be of the highest integrity and spirituality, and Watkins's reputation no doubt benefited from the prestige of his office.

Following routine release from his church position in 1946, Watkins decided to run again for office, though not for a seat in the House of Representatives. Thinking himself suited for a higher position, he judged the political climate more accurately this time. Capitalizing on a wave of postwar conservatism in Utah, he easily won election to United States Senate.

Watkins's Senate campaign of 1946 and his reelection campaign in 1952 demonstrated his marked distaste for partisan politics. He preferred to run on his record and experience and to leave the political infighting to others. In fact, in keeping with his deeply religious perspective on political affairs, he believed that disagreements were born of contention and contrary to the spirit of enlightenment. Shortly after announcing his candidacy in May 1946, for example, he addressed a group from the Orem Community Church and expressed his belief that political discussions needed "more of the spirit of Christ and less recriminations and bitterness." He felt that the solution to all problems—social, political, and economic—could be found in the message of his religion. Struggles between nations would end and the strife between capital and labor would cease because, as he put it, "if both sides were guided by the spirit of Christ controversies would soon be settled. In truth, they would never arise, because the spirit of Christ does not give rise to controversy." He charged that civilization itself would not survive without spiritual redemption. "Only thus," he continued, could "discontent be driven out and all the shades lifted from the road ahead."[11]

Watkins's determination to avoid political debate and to stress religious themes formed the basic strategy in each of his election campaigns. His May 1946 speech to the Orem church became something of a campaign credo, so much so that during his 1952 reelection campaign substantial portions of it were reprinted in the newspapers as paid political advertising.[12] Other campaign ads stressed Watkins's community background and experience and avoided any mention of his opposition. In 1946, for example, his advertisements stated simply that "Watkins is a Builder. He gets things done. His record proves it—Deer Creek, Geneva Steel, community develop-

ments." The same advertisement also pointed out that Utah needed a Republican senator to keep in step with the "new Republican Congress," which constituted the most partisan statement made by the candidate or his staff in 1946.[13]

Indeed, newspaper accounts of the 1946 and 1952 campaigns are devoid of any mention of Watkins's opponents or specific political issues—a strategy in keeping with the Mormon tradition of selecting political leaders on the basis of character and church membership. In Orem, where Watkins's religious background was accepted as a matter of course, church connections played an important role in his campaign. In October 1946 a committee composed of representatives from every local Mormon congregation planned a community reception to honor Watkins, demonstrating the grassroots church involvement. The local newspaper, the *Orem-Geneva Times*, reported the reception as if it were a community function sponsored by civic leaders rather than local church authorities. Perhaps as justification for failing to make these distinctions, the paper stated that "Arthur V. Watkins is well known and respected in this area and it is the feeling of the entire community that he should be honored at a public reception."[14]

Like most small-town Utah newspapers of the time, the *Times* routinely blurred distinctions between church functions and community functions—a tendency also reflected in the attitudes of the local Mormon populace. Church members clearly perceived Watkins as candidate of both the church *and* the community. When Watkins narrowly failed to win a majority of votes in the 1946 Republican primary, necessitating a primary runoff election, subsequent political ads in the Orem paper reminded readers to vote for "Orem's Candidate for U.S. Senator" and urged everyone to "Remember! Everybody votes this time."[15] Readers apparently followed the injunction, because Watkins won the runoff election by a seven-to-one margin.

In the general elections, Watkins's Democratic opponents (incumbent Senator Abe Murdock in 1946 and Representative Walter K. Granger in 1952) undoubtedly felt the frustration of waging a political campaign against a decidedly nonpolitical opponent. During the latter election, Granger found himself squeezed between Watkins's personality-driven strategy and smear tactics that may have

originated with Watkins's staff. In attempting to confront Watkins's non-ideological program, Granger brought in Senator Warren G. Magnuson from Washington State (a well-known Democratic Party leader) to inject a little political invective at a fund-raising dinner. Magnuson summed up the problem succinctly when he described Watkins as a "typical Republican senator who would have been happy in the McKinley administration" and then called on citizens to "vote for a party and its program rather than for personalities."[16] Clearly, Magnuson did not fully appreciate the extent to which the Utah senator's Mormon constituents supported the candidate precisely because of his background and personality.

Watkins's political handlers, meanwhile, proved less willing to stay above the political fray, and a rather unsavory attempt to smear Granger surfaced in the last days of the 1952 campaign. On 31 October the Salt Lake City newspapers ran a paid political advertisement which claimed that Granger had abused his office by receiving government assistance in the construction of a fence and other improvements to his Cedar City ranch. An outraged Granger called the accusation an "infamous lie" and demanded that the newspapers print a retraction. He also insisted that the photographs used in the political advertisement were traceable "right to a member of the office staff of Arthur V. Watkins."[17]

Granger clearly felt that Watkins was responsible for the attack. Regardless of the validity of this charge, it is unlikely that such tactics were necessary in an election where Watkins enjoyed the privileges of incumbency as well as the considerable advantage of riding on the coattails of popular Republican presidential candidate Dwight D. Eisenhower. In the end Watkins won his reelection campaign without serious difficulty, garnering 54 percent of the vote, but Granger's allegations present an interesting depiction of Watkins as a politician willing to engage in devious, low-level tactics while maintaining an image of one above the give-and-take of politics. Shortly after the 1952 election, several events within the realm of Indian affairs would demonstrate Watkins's ability to function in exactly that manner.

In 1947, though, Watkins entered office as a typical freshman senator of that era. He had extensive experience in local politics, solid training in law, and a prosperous career. During his first term

he made a name for himself as a passionate conservative and a sharp critic of Roosevelt/Truman foreign policy, charging that American interests had been betrayed at the Yalta Conference and that the United States had been too soft on the Soviets both during and after the war.

Watkins had not been in office long, however, when the Republican leadership in the Senate assigned him work of quite a different nature. In only his first month in office, he was appointed to chair the Senate Subcommittee on Indian Affairs, an assignment largely reflecting the relative lack of importance the Senate attached to such matters. The subcommittee functioned within the jurisdiction of the larger standing Committee on Public Lands (later renamed the Committee on Interior and Insular Affairs), and although the subcommittee was lacking in stature, Watkins soon found that it held important oversight responsibility over a system of Indian administration burdened by the years of wartime neglect.

At this early stage of his career Watkins had little real experience working with Indians and their problems. The many years he had spent on or near the Uintah and Ouray Reservation imbued him with the common prejudices found in border-town populations. He deplored the conditions typically found on reservations and disapproved of the paternalistic nature of BIA programs, but beyond his rather diffident personal observations there is little evidence that he ever had direct dealings with Indians or the slightest appreciation of or education in Indian affairs or history. What he brought to the Senate is best described as a lack of experience coupled with compensating religious convictions about Indians—in particular, convictions about the origins and ultimate destiny of Indian peoples.

Watkins revealed in a 1947 radio address entitled "What of the Future of America?" the strong relationship between some of his most deeply held political and religious beliefs. "From my earliest infancy," he said, "I have been taught that the land of America is a land choice above all other lands; that it was kept from the knowledge of the rest of the world for many centuries, to be revealed in God's own time for the establishment of a great Nation by inspired men—a Nation that would have the responsibilities and opportunities sometime in its history that are America's today."[18] These sentiments reflect a major theme of the Book of Mormon, a text held by

Mormon adherents to be the scriptural history of the ancient inhabitants of the Western Hemisphere, restored by an act of God to function as a "second witness" to the divine mission of Christ. A key tenet of Mormon theology holds that God reserved America as a "choice land" upon which he would, in the "latter days," restore his church and kingdom.

Watkins's views about American exceptionalism may seem anachronistic given the federal government's persecution of the Mormon Church during the antipolygamy campaigns of the late nineteenth century. However, in subsequent decades the church experienced a dramatic transformation toward the mainstream of social and religious respectability. Historian Jan Shipps has interpreted this shift as an indication that the mechanisms of group boundary maintenance were transferred away from the church as a whole and toward the individual. By midcentury, Mormons like Watkins lived in compliance with an exacting code of personal conduct, which included the payment of a 10 percent tithe on all income; a clearly articulated dietary code that excluded alcoholic beverages, coffee, and tea; circumspect standards of sexual morality; and personal modesty in dress and behavior. The latter point, especially, was reinforced by the wearing of special undergarments that symbolized a personal commitment to sacred covenants made in Mormon temples.[19]

These patterns of personal behavior continually reminded church members that they were members of God's kingdom on earth—a chosen people, directed by living prophets. Ironically, while individuals like Arthur Watkins demonstrated Mormon otherworldliness through personal living habits, the church as a whole rigorously sought to achieve mainstream acceptability. The antipolygamy battles of the past century provoked a vigorous public-relations campaign to reform the church's image. Leaders issued conciliatory public statements, sought open relations with the outside community, and made a concerted effort to explain Mormonism to the outside world.[20] Mormon ecclesiastical and political leaders made every attempt to emphasize patriotism and conformity with the "American way." During the 1950s, church leaders expressed their anti-Communist sentiments and promoted American values at every opportunity. Mormon Church president David O.

McKay and apostle Ezra Taft Benson (Eisenhower's secretary of agriculture) were two of the most stridently partisan of the church leaders. Both openly espoused conservative Republican ideology. On a number of occasions Benson even expressed his admiration for the John Birch Society, despite the church's "official" political neutrality and the disapprobation of his fellow church authorities.[21] McKay, more circumspect in his public announcements, went so far as to declare that Eisenhower's election constituted a "turning point in United States, if not world history."[22] McKay and Benson both saw Watkins as an ally and compatriot. His bedrock conservatism, patriotic fervor, and conformist tendencies existed easily within the prevailing political sentiments of the church hierarchy.

To understand Watkins is to understand that as an orthodox member of the Mormon Church he genuinely believed his church was the only "true" church, the only one directed by God, and the only one possessing the "restored" gospel. Such a perception naturally led to the conviction that other religions and cultures were in error. Thus, to describe him as merely ethnocentric is to understate the intensity of his personal orthodoxy. He *was* ethnocentric, overtly so, and completely blind to emerging concepts of ethnicity or racial pluralism.

Watkins's views about a homogeneous society paralleled his conditioning in the rigidly conformist environment of the Mormon Church. Although lacking a professional clergy at the local level, Mormonism is in no way democratic. In the church, priesthood authority flows from above, starting with the church president, who is regarded as the "prophet, seer, and revelator" for the entire membership, and continues through to a select quorum of senior men known as the Twelve Apostles, and other, lesser "general authorities." Gathering semiannually in a "general conference" of the church, these authorities offer addresses to the membership that, as Shipps has noted, function with "an informal *ex cathedra* infallibility," as if these "addresses are somehow distillations of the concentrated power of revelation and inspiration present at that time and in that place."[23] Mormons are constrained to "follow the prophet" and are conditioned to value obedience above independent thinking.

In a message that was widely disseminated to church members in Watkins's day, Joseph Fielding Smith, then a member of the Quorum of the Twelve Apostles and later church president, wrote:

> Any Latter-day Saint who denounces or opposes, whether actively or otherwise, any plan or doctrine advocated by the prophets, seers, revelators of the church, is cultivating the spirit of apostasy. One cannot speak evil of the Lord's anointed . . . and retain the holy spirit in his heart. This sort of game is Satan's favorite pastime, and he has practiced it to believing souls since Adam. He [Satan] wins a great victory when he can get members of the Church to speak against their leaders and to do their own thinking.
>
> When our leaders speak, the thinking has been done. When they propose a plan—it is God's Plan. When they point the way, there is no other which is safe. When they give directions, it should mark the end of controversy, God works in no other way. To think otherwise, without immediate repentance, may cost one his faith, may destroy his testimony, and leave him a stranger to the kingdom of God.[24]

It goes without saying that church authorities do not think highly of alternative voices. The usual recourse in dealing with intellectual dissent has been excommunication, a long-dormant practice revived in the mid–twentieth century with the case of Fawn M. Brodie, niece of church president David O. McKay, after the 1945 publication of her damning biography of church founder Joseph Smith.[25] In recent decades the church has discouraged independent church symposia, journal publications, and other literary efforts and has instituted a rigorous program to "correlate" all church literature and instructional materials. Mormon scholars who have participated in forums outside church control have found themselves subject to church discipline, including excommunication.[26]

These conformist tendencies transcend administrative paranoia typically found in authoritarian organizations. In the Mormon Church the concept of unity among true believers is built into the doctrine. While some aspects of Mormon theology have proven highly mutable over time, belief in the necessity of church solidarity

remains a fundamental concept—and this is as true today as it was in Watkins's era.[27] Writing in the 1950s, Mormon theologian Bruce R. McConkie noted that those who live according to the gospel possess "the same mind, being transformed into the same image or likeness, even the express image of him who fills all in all."[28] In his encyclopedic work titled *Mormon Doctrine*, McConkie defined "unity" in more explicit terms: "This unity among all the saints, and between them and the Father and the Son, is reserved for those who gain exaltation and inherit the fullness of the Father's kingdom. Those who attain it will all know the same things; think the same thoughts; exercise the same powers; do the same acts; respond in the same way to the same circumstances; beget the same kind of offspring; rejoice in the same continuation of the seeds forever; create the same type of worlds; enjoy the same eternal fullness; and glory in the same exaltation."[29]

The remarkable homogeneity in Mormon culture has been noted by outside observers since the early days of the church. Non-Mormon authors Richard N. and Joan K. Ostling, in their recent treatment *Mormon America: The Power and the Promise*, described Latter-day Saint students as "bright, dedicated, disciplined, hard-working, intensely loyal, obedient, fairly homogeneous in outlook, impressively capable of altruism and personal sacrifice, generally highly submissive to ecclesiastical authority, and committed to official orthodoxy as defined by the hierarchy."[30] Pulitzer Prize–winning political cartoonist (and grandson of former church president Ezra Taft Benson) Steve Benson offered a less flattering perspective on the same phenomenon: "Look at an average group of Mormon followers, and what does one find? People who dress the same way down to the same underwear, follow the same leader, think the same thoughts, believe the same things, read the same books, obey the same commandments, vote the same way, fear the same enemies, oppose the same ideas, condemn the same people who don't think the same way, pay the same church, avoid the same movies, eat the same food, associate with the same people, marry the same kind, and give the same reasons for believing that God and Mormonism are one-in-the-same."[31]

Given the extensive emphasis on conformity in Mormon belief and practice, there is little wonder that Arthur Watkins lacked an

appreciation for cultural diversity. In Watkins's cosmology, disparate cultures existed only because of ignorance and apostasy from the "true gospel." Diversity, as he undoubtedly perceived it, was a *problem* to be solved through the process of conversion.

Religious pronouncements such as those offered in Watkins's 1947 radio address actually bolstered support from his constituency. The *Orem-Geneva Times* offered the opinion that it was "good to hear a man in high office publicly acknowledge his faith in God and state his determination to be guided by Christian precepts in carrying out the duties of his office."[32]

Senator Watkins did not simply acknowledge his religious affiliations publicly; he relied on them privately as well. Over the course of his senatorial career he contacted David O. McKay for advice on a wide variety of matters. McKay willingly dispensed his views to Watkins, and he relied on the senator in turn to represent the church's position in political affairs. For example, in 1953, when Watkins received pressure from President Eisenhower to support an emergency immigration bill allowing 240,000 German, Dutch, Greek, and Italian immigrants to enter the country, he phoned McKay and asked for advice on whether he should support the measure.[33] On other occasions, McKay took the initiative. In June 1950 he phoned Watkins to express his opposition to the appointment of Judge Willis Ritter to the U.S. District Court of Utah. Interestingly, McKay supported the nomination of one of Ritter's competitors for the appointment—Salt Lake City attorney John S. Boyden, who would become an important ally to Watkins in dealing with Utah Indians.[34]

Although there is no known evidence that the senator and the church president ever discussed matters of Indian policy, Watkins's view about race must have been profoundly influenced by the racial doctrines of the Mormon Church. These doctrines have been modified considerably in recent decades, even to the point of changing the wording in key passages of the Book of Mormon.[35] At the time of Watkins's tenure in the Senate, however, the church still denied the right to hold the priesthood to those of African racial descent (and continued to do so until 1978). This practice was justified by a number of speculative doctrines, most of which emphasized God's role in placing a "curse of darkness" upon these people. Mormon theolo-

gian McConkie explained the idea as follows: "If we had a full and true history of all races and nations, we would know the origins of all their distinctive characteristics. In the absence of such detailed information, however, we know only the general principle that all these changes from the physical and spiritual perfections of our common parents have been brought about by departure from gospel truths."[36]

Dark skin, in other words, came to Africans, American Indians, and other people of color as a consequence of sinfulness and apostasy. The idea is fully developed in the Book of Mormon and must have heavily influenced Watkins's beliefs on the subject. In fact, it is inconceivable that it could have been otherwise, because acceptance of the Book of Mormon is a foundational requirement for belief in the church.

Revered as Scripture by church members, the Book of Mormon holds that present-day Indians are descendants of Israelites who came to the Americas around 600 B.C. According to the doctrine, they divided into two great civilizations shortly after their arrival, one imbued with the true gospel and the other with darkness and apostasy. The second group, called Lamanites, thereafter began a precipitous decline and received a punishment from God as a result. As the prophet Nephi tells the story, "Wherefore, as they were white, and exceeding fair and delightsome, that they might not be enticing to my people the Lord did cause a skin of blackness to come upon them." They afterward became an "idle people, full of mischief and subtlety, and did seek in the wilderness for beasts of prey."[37]

The Book of Mormon contrasts these savage Lamanites most unfavorably with the chosen people of God, the Nephites. The Nephite prophet Enos described them as follows: "And I bear record that the people of Nephi did seek diligently to restore the Lamanites unto the true faith in God. But our labors were vain; their hatred was fixed, and they were led by their evil nature that they became wild, and ferocious, and a bloodthirsty people, full of idolatry and filthiness; feeding upon beasts of prey; dwelling in tents, and wandering about in the wilderness with a short skin girdle about their loins and their heads shaven; and their skill was in the bow, and in the cimeter, and the ax. And many of them did eat nothing save it was raw meat; and they were continually seeking to destroy us."[38]

This description of the Lamanites corresponded closely with popular images of Indians held by nineteenth-century Americans living on the frontier, including trans-Appalachian Mormon converts in the time of Joseph Smith. But it doubtless also rang true with rural Utahns in the early twentieth century—especially for those who, like Watkins, spent their childhood and early adult years on the borders of the Uintah and Ouray Reservation. Book of Mormon doctrine had particular relevance in these cases because it reminded faithful Mormons that modern Indians were the literal descendants of the Lamanite people and that it was the church's destiny to redeem Indians from their fallen state and elevate them to their former glory. That is the doctrine, and Watkins professed an unshakable belief in it.

Watkins's eventual rise from freshman senator to the leading Senate advocate of Indian policy undoubtedly owed much to these Mormon concepts. Many members of Congress held strong opinions about the need for reform in Indian affairs, but Arthur Watkins formed his opinions about Indians on the bedrock of his unusual religious convictions—a fact that made him unique among his peers.

Early in Watkins's first term, however, before he had an opportunity to formulate any plans for his Subcommittee on Indian Affairs, and in fact within days of his appointment as its chair, the issue of Indian policy reform came abruptly to the attention of the Senate Civil Service Committee. The chairman of the committee, William Langer of North Dakota, saw the BIA as an easy target in his drive to eliminate government waste and duplication from the federal budget. Langer's committee began an extensive series of hearings in late January 1947 to examine the possibility of reducing the number of federal employees.

One of the first summoned to offer testimony was Assistant Commissioner of Indian Affairs William Zimmerman Jr., an administrator who had worked in the bureau throughout the 1930s and 1940s during John Collier's administration. Zimmerman could scarcely have been prepared for the questions leveled at him by Senator Langer and his cohorts. What Langer's committee wanted, as it was explained to the assistant commissioner, was some kind of recommendation for economizing and reducing the number of federal

employees on the bureau's payroll. Zimmerman responded that the BIA could not even meet current obligations—that many Indian children were not served by schools, while others were sick and in need of health care that the bureau could not provide, and so on. Not impressed with this logic, Langer continued to demand information on the number of employees working for the bureau and the extent of their activities. Another committee member, Senator Dennis Chavez of New Mexico, finally put it to Zimmerman directly: "Do you not think," he said, that "if Congress would deem it advisable, to let those people handle their own lives we could save a little money in that respect?" Zimmerman retorted that the Indian people already lived their own lives and that the services provided to them did not require any supervision of their day-to-day existence.[39]

Senator Langer, dissatisfied with the testimony, demanded to know why "a Chinaman can come in here and be taken care of, or a Jap, any other nationality of people on this earth can come into this country" and be taken care of by existing federal, state, and local services, but not Indians. Langer saw no logic in maintaining a separate department costing millions of dollars for a few hundred thousand people.[40] He wanted to know, in other words, why the government should not simply abolish the bureau and be done with it. Zimmerman fell back to what ultimately proved to be his last line of defense: that the Indian people were in various stages of development and that it was "too soon to declare by an over-all order that all of these people . . . should be treated alike." "It would," he declared, "be very regrettable to see that kind of solution."[41]

After more debate, Langer finally dismissed Zimmerman with instructions to return the following day with more complete and useful data. He evidently hoped that the assistant commissioner might see the light, so to speak, and come back with a concrete proposal for terminating at least some of the bureau's functions. If so, he was soon disappointed. The next day, 23 January 1947, Senator Chavez opened the questioning by asking Zimmerman if, "after meditating last evening," he had come up with a plan. Zimmerman's response was straightforward and to the point: "The Indian Service is primarily engaged in running institutions," he said. "You can reduce the number of students in a school. You can close the hos-

pitals. You can stop selling timber. . . . You could do any of those things."[42]

Zimmerman wanted the committee to know that cutting bureau services entailed human costs. As he perceived the situation, the BIA existed to provide services to Indians, subject to the needs and desires of the Indians themselves. He pointed out to the committee that many tribes operated under federal charters established by the Indian Reorganization Act (IRA) of 1934 and that charters of this sort contained provisions for the orderly termination of bureau services—again subject to the will of the tribes in question. Zimmerman went on to enumerate the trust obligations the bureau held on behalf of the tribes and the myriad bureau responsibilities arising from the Indian Claims Commission (ICC) process. He expected that once the committee members understood the complexity of the issues involved, they would recognize the grave difficulties inherent in abolishing the bureau.

Once again, Zimmerman guessed wrong. After only two days of hearings, Langer asked his staff director, George D. Riley, for a summary of information produced by the sessions. Riley responded that in his opinion the committee had not "gotten down to the practical side of the situation." As he put it, "We have been doing the frontal attack and not too much voluntary information has been forthcoming."[43] Then Langer informed Riley that he already had enough information to act—enough, in fact, to produce a bill. After only two days of testimony, Langer announced to the incredulous assistant commissioner, the Civil Service Committee, and everyone else present that he had already made up his mind: "I think we ought to abolish the Indian agency entirely. It is absolutely unnecessary. . . . I think this Bureau is absolutely useless."[44]

Word of the Civil Service Committee hearings and Senator Langer's attack on the BIA quickly reached Senator Watkins. As chair of the Subcommittee on Indian Affairs he had a vested interest in the proceedings, so when the Civil Service Committee resumed its hearings in early February 1947, Watkins elected to sit in on a session and participate in questioning witnesses. Senator Langer made him feel more than welcome. In fact, after watching Watkins interrogate one witness over the alleged abuses of bureau personnel

charged with supervising the Mission Indian Federation in California, Langer invited him to ask further questions. Watkins responded disingenuously, saying, "You understand my position in coming here as chairman of the Subcommittee on Public Lands." Langer certainly did understand. He knew that Watkins's subcommittee had oversight responsibility concerning Indian affairs, even if the Utah senator was reluctant to explain his intentions. So Langer attempted to force Watkins into the open by inviting him to chair the session, saying, "It is perfectly all right. Our two committees are going to work together." As Watkins assumed the chair, Langer continued, "We will work together and we can abolish this Indian Bureau as we aim to do."[45]

As the foregoing exchange indicates, the two senators had obviously shared views on the question beforehand and found themselves in philosophical agreement. But Watkins was either unwilling to move as precipitously as Langer wanted or else reluctant to relinquish any of his jurisdiction, so he answered his colleague by saying, "Not unless we should." Watkins acknowledged that although he had not had the opportunity to speak with the other members of his subcommittee, he felt that he could speak for them. "Our theory is this," he continued. "We want to investigate carefully, and if we find it should be abolished, all right. If it should not be abolished, but just trimmed down and streamlined, let us do that. I am not setting out with the aim to abolish anything until I know it ought to be."[46]

Senator Chavez understood intuitively that Watkins's protestations were based more on jurisdictional than philosophical grounds. He therefore interjected his view that the position of the Civil Service Committee should be to investigate personnel and costs and that it should not presume jurisdiction over Indian affairs. Langer and Watkins quickly agreed, with Watkins adding that the two committees should take the two areas of oversight and "tie them in together."[47]

In fact, it was Langer's committee that continued to investigate the possibility of abolishing the bureau, while Watkins's Indian Affairs subcommittee turned to other matters. In early February, Langer recalled Assistant Commissioner Zimmerman to testify and demanded specific information on how the bureau could reduce its personnel and expenses. Zimmerman, who by this time had been

thoroughly cowed by the committee, responded by producing a list of Indian groups, which he had further subdivided into three categories. The first category, he said, consisted of tribes that could be denied federal services immediately or in the near future. He listed ten tribal groups, including the Klamath, Menominee, and Turtle Mountain Chippewa Indians. Zimmerman reasoned that these tribes possessed a combination of resources, business acumen, and acculturation that would allow them to stand alone.[48]

Zimmerman continued by defining a second category of tribes: those capable of functioning with "minimal" federal supervision within ten years. He placed eighteen Indian groups into this category and further explained that his selection of a ten-year period was an arbitrary one based on the availability of bureau data (which was developed on a ten-year baseline) and the ten-year charter of the ICC. This last point illustrates the importance government officials such as Zimmerman assigned to the ICC in preparing tribes for eventual termination. In the case of tribes that received significant judgments paid by the United States, as he put it, "federal supervision could be properly and probably immediately curtailed, because those tribes would be in position then to finance their own functions."[49]

Into the third category Zimmerman placed the remaining tribes—those which, in his judgment, would require more than ten years to prepare for the termination of federal supervision. In this last category he placed the Indians of the Uintah and Ouray Agency of Utah—including the three bands of Northern Ute Indians, as well as the Utah Paiutes served by the agency.

Although the Civil Service Committee hearings generated no immediate legislation to curtail the activities of the BIA or terminate any tribe, they did produce a formula for accomplishing both objectives at a later date.[50] Meanwhile, congressional support for this new approach to Indian policy gathered strength in both houses. Watkins's subcommittee took up the question in April and May 1947, affording members the opportunity to argue that Indians needed to be "emancipated" from bureau control.[51]

Watkins's subcommittee concerned itself with the more immediate problem of meeting the crisis on the Navajo reservation. Conditions of overcrowding, drought, soil erosion, and subsequent

stock-reduction programs had resulted in considerable distress on the reservation in the immediate postwar years. After investigating the situation, Watkins addressed the full Senate in December 1947 and proposed an amendment to a pending House Navajo-Hopi emergency relief bill. His solution was to alleviate some of the starvation and destitution by authorizing the appropriation of $2 million to the secretary of the interior for the immediate relief of these Indians. But the amendment also called upon the secretary to submit to Congress "at the earliest practicable date" a "long-range program dealing with the problems of the Navajo and Hopi Indians."[52]

Watkins did not reveal what he had in mind as an ultimate solution, although he gave a hint of his committee's plans by indicating that the relief bill was "only part of what we are planning and hope to introduce . . . covering a long-range program"; he then added a tantalizing detail: "We hope [we] may put these Indians in such circumstances that it will not be necessary for Congress to pass relief measures." Senator Langer, thinking he might have just heard a reference to a possible termination program, immediately rose to his feet and posed several questions designed to expose Watkins's position. Langer asked, "Does not the Senator think the sum is totally inadequate, that the average Indian on the reservation would receive about ten dollars a month out of the $2 million fund?" Watkins admitted that it was a miserly sum but argued that it was only a short-term solution. He then proceeded to describe his recent visit to the reservation, during which he concluded that the situation was not as bad as advertised. Besides, he told the assembled body, "the Indians are used to poverty."[53]

The answer did not satisfy Langer, however, who continued to bait Watkins by comparing the $2 million to the $600 million recently appropriated for war-torn Europe and China. Watkins responded only by noting that it might take $75 million to $100 million to put the Navajos "on a permanent basis of recovery," but he refused to tip his hand on how that might be accomplished. As the discussion turned to the more pertinent details of how immediate relief would be provided, Langer let the issue drop, and Watkins's relief measure passed the Senate with little difficulty.

The year 1948 proved to be decisive for termination policy, as the idea finally gained enough of a following to attract the attention

of policy makers in and out of government. Congress responded by introducing more than a hundred bills to transfer sections of reservation land to non-Indian buyers or to issue fee patents to Indian land. BIA budgets also fell victim to congressional disfavor as appropriations were substantially reduced in both 1947 and 1948—by approximately $9 million in 1948 alone.[54] As a consequence, circulars issued by Acting Commissioner Zimmerman called for a series of conferences between the central and regional offices to develop "comprehensive long-range programs" for the "discontinuance of federal supervision and control at the earliest possible date compatible with the government's trustee responsibility."[55]

The year 1948 also seems to have been pivotal for Arthur Watkins, for during this period he finally began speaking openly about his philosophy for dealing with the "Indian problem." In October, Watkins visited with BIA officials and Ute tribal leaders on the Uintah and Ouray Reservation. Watkins's autocratic approach so alarmed Uintah and Ouray superintendent Forrest R. Stone that he immediately sent a comprehensive report on the senator's visit to Acting Commissioner Zimmerman. Throughout the duration of his visit, wrote the superintendent, Watkins made it clear that "he was not interest[ed] himself in administrative functions" but merely wanted to tour the reservation and make his views known. Stone warned Zimmerman: "It appeared to me that Senator Watkins made himself very clear to practically everyone with whom he talked that he was advocating the discontinuance of the Indian Service as it is now functioning just as quickly as possible, and that the Indian person should no longer be set apart from the full responsibilities of citizenship and that there should be no distinction made between him and other citizens of Utah; that definitely the Indian Service had only the responsibility of winding up its job and that if they had successfully accomplished their work they should be out of business."[56]

Over the course of Watkins's visit to the reservation, Stone observed that the senator's views were not based on local reservation conditions or any of the particular needs of Indians but rather on his own beliefs about what constituted correct Indian policy. Stone added that he did not feel that he "was in a position to change his [Watkins's] mind on any of these matters even if arguments would

have produced any particular effect. His contentions were that the above [termination program] was the will of Congress and that no one was going to change it." Yet the superintendent also knew that Watkins's "sink or swim" program would be extremely damaging to the emerging Ute leadership. As he put it, "It is not a very inviting picture, regardless of how well the language sounds, to throw them into the water when we know they are going to sink."[57]

Stone's report of Watkins's visit struck a responsive chord with the bureau officers in the commissioner's office. Zimmerman was away on an extended visit to Oklahoma and the Southwest, so Assistant Commissioner John H. Provinse responded to Stone's letter and acknowledged Watkins's pro-termination viewpoint as well as his support in Congress. Provinse also pointed out, however, that there were many others in Congress who could "appreciate the danger of too hasty or ill-considered action," adding that "success in achieving a moderate approach will depend probably in the end on how effectively we can bring together accurate factual data bearing on the issues involved." Thus he directed Stone to devote his attention to collecting data that would support a more moderate, bureau-directed approach to termination—a gradual program based on Indian self-sufficiency.[58]

The foregoing exchange of letters between Stone and the commissioner's office demonstrates that bureau personnel saw Watkins as a direct threat to both the continued existence of the BIA and the welfare of the Indian people. They clearly hoped that they could blunt his influence with superior information. In the meantime, given the bureau's responsibility to carry out congressional directives, they proceeded cautiously and attempted to avoid a showdown with the Indian Affairs committees of both houses. It is interesting to note that both Provinse and Stone classified their letters as confidential in an attempt to restrict their circulation to select bureau officials.

Watkins's visit to the Uintah and Ouray Reservation coincided with the perception of many that the reservation system actively contributed to the problems Indians were experiencing. In March 1949 the Hoover Commission published a long-awaited report on the effectiveness of Indian policy and administration. Officially titled the Commission on Organization of the Executive Branch of the

Government, the panel (headed by former president Herbert Hoover) received its charter in July 1947 and commenced a thoroughgoing examination of the entire executive branch. The resulting report on Indian affairs gave special emphasis to the inadequacies of Indian reservations, noting in the very first paragraph, for example, the ongoing crisis on the Navajo reservation that had so recently occupied Senator Watkins's attentions.

The Hoover Commission made several recommendations aimed at reforming federal Indian policy. These centered on the fundamental contention that Indians should be "integrated" into the larger population as a "best solution" to the varied problems of the Indian people.[59] Most of the identified problems—especially those related to the markedly lower standard of living, the patterns of dependency, and the attitudes of helplessness on the part of the Indians themselves—were thought to be products of an untenable reservation system. The underlying assumption of the commissioners (not shared by dissenting commission members Dean Acheson, James H. Rowe Jr., and James Forrestal) was that the reservations must be either eliminated or drastically modified. On the whole, the commission recommended that functions of the BIA be transferred to state governments wherever practicable and that the remaining activities be transferred to a new department of the federal government responsible for matters related to social security.[60]

These recommendations were entirely in keeping with the basic tenets of Watkins's own ideas about Indian policy. From his early years spent farming his father's surplus Indian land in the Uintah Basin, to his young adult years as a struggling attorney in Vernal and editor of the *Vernal Express*, to his visit to the Uintah and Ouray Reservation as a freshman senator, Arthur Watkins ardently believed that reservations were outmoded relics of the nineteenth century.

Equally important in the formulation of his philosophy, Watkins subscribed to Mormon doctrines that considered Indians a "fallen race" destined only to become "white and delightsome" again when converted to the restored gospel. These religious considerations left him quite blind to the possibilities of a middle course in Indian policy, one that would simultaneously protect Native culture *and* Indian rights. He firmly held to the idea that Indians could only

be "elevated" through the application of policies designed to promote rapid and complete assimilation. As he put it several years later in an article he wrote for the American Academy of Political and Social Science: "The matter of freeing the Indian from wardship status is not rightfully a subject to debate in academic fashion, with facts marshaled here and there to be maneuvered and countermaneuvered in a vast battle of words and ideas. Much more I see this as an ideal or universal truth, to which all men subscribe, and concerning which they differ only in their opinion as to how the ideal may be attained and in what degree and during what period of time."[61] Watkins believed, in other words, that assimilationist policy was akin to self-evident truth. He even coined a new name for termination, calling it the "Indian freedom program."

Obviously, not everyone saw things his way. One who did not was Oliver La Farge, the noted author and advocate of cultural diversity. In a companion article to Watkins's, La Farge commented on the religious origins of the senator's beliefs about Indians. He acknowledged that Indians were, in fact, dark-skinned, but then added: "In many parts of the United States they encounter in varying degrees the discrimination and segregation we apply to all dark-skinned people. It occurs even in Salt Lake City, center of Mormonism, with its special doctrine concerning the origin of Indians."[62]

To La Farge, the ethnocentrism inherent in Watkins's ideas was little more than religiously motivated racism. Yet there is no evidence that the arguments of Indian rights advocates such as La Farge had the slightest impact on Watkins. Indeed, by the time the two men had exchanged the above sentiments, Watkins had already played a key role in the termination of several tribes.

In 1950, few people knew what Watkins intended for Indians or understood his philosophical underpinnings, but the senator had a clear idea of what he wanted to do. The time was right, and the mood of the country perfectly complemented his objectives. All he needed was an opportunity—another circumstance like the one the Navajo relief bill offered him. It arrived in January, when a handful of disgruntled Uintah Utes sent him a long letter complaining about the state of affairs on the Uintah and Ouray Reservation. They ex-

plained to the senator how there were "three separate and distinct bands of Indians on the Uintah-Ouray Indian Reservation, namely the Uintahs, the Whiterivers, and the Uncompahgre," and that each band possessed certain property and benefits that did not "accrue to the other two bands." Under the IRA these Indians had set up a federal cooperative and agreed to share their resources equally, but the arrangement was not working. According to the petitioners, "The rank and file of the Indians never did and do not now understand the workings of the cooperative where the rights of the separate bands accrue to all three bands; this leads to endless disputes, bickerings, and general dissatisfaction. The Indians on the reservation do not like and do not want the pooling of their resources."[63]

The Indians blamed these problems on the IRA, under which they claimed to be "regimented into a socialistic existence." They argued instead for a restoration of property to the individual bands, which, they noted, coincided "with the American concept of property rights and has not tines of Communism."[64] Not that the authors of the letter were particularly worried about such things—government by band derivation was no more or less communal than that of the post-IRA tribal government. They simply wanted to get the senator's attention, and playing on his reputation as an anti-Communist crusader seemed like an effective way to do it.

The Uintahs did not disclose to Watkins the real reason for their dissatisfaction, which stemmed from the loss of control of their own reservation. As the descendants of several earlier bands of Northern Utes indigenous to Utah, the Uintahs gave up their claim to the valleys of the Wasatch Front in the 1860s and removed to the Uintah Basin—hence the name Uintah Utes. The Uintah Reservation belonged to them according to the provisions of the unratified Spanish Fork Treaty of 1865. However, following the Meeker Massacre in 1879, the U.S. government removed the Whiteriver and Uncompahgre Utes from Colorado and sent them to the Uintah Basin. This was not a particularly happy arrangement for the original Uintah inhabitants, but at least the Uintahs had the upper hand. Eventually they learned to coexist with the Whiteriver Utes fairly well, especially after several of the Whiterivers fled in the reservation in 1906 and were forcibly returned by the government. The Whiteriver homelands lay

in close proximity to the Uintah Basin, and the Uintahs understood the Whiterivers' sense of displacement. Perhaps they even developed sympathy for these persecuted kinsmen.

Relations between the Uintahs and Uncompahgres, however, remained unpleasant. The Uncompahgres had their own agency, named after their famous chief, Ouray. The BIA administered both agencies as a single unit ("Uintah and Ouray"), but the two bands preferred to maintain the separation. Stories are still told of the early days when the Uintahs would sit in their council circle and make decisions while the Uncompahgres were forced to sit in the back and keep quiet.[65]

The tables were turned in 1937 when the three Northern Ute bands elected to incorporate under the provisions of the IRA. Suddenly the two Colorado bands had a voting majority, and the Uintahs lost exclusive control of the tribal government. They still had the advantage of more experienced and acculturated leaders, since the Uintah band had a long history of intermarriage with whites and adoption of other Indians, but this advantage would ultimately lead to their downfall.

The letter must have seemed like a godsend to Senator Watkins. He suddenly had evidence that influential members of the largest and most powerful tribe in his own state wanted to revoke the charter of the tribal government established under the provisions of the IRA. Doing so would severely undermine sovereign power of the tribe and diminish the protections of federal guardianship.

Watkins must have also recognized another element in this fortuitous convergence of circumstances: a pending settlement in the Big Ute Case, a long-running suit brought by the Colorado bands of Ute Indians against the government in the U.S. Court of Claims. The tribe's attorney of record was Ernest L. Wilkinson, an acquaintance of Watkins's and a fellow member of his Mormon congregation in Washington DC. Watkins undoubtedly realized that the pending settlement would provide the Ute tribe with a very large sum of money. And, as chairman of the Senate Subcommittee on Indian Affairs, he possessed the ultimate authority on how it could be spent.

2 ERNEST L. WILKINSON AND EIGHTEEN MILLION DOLLARS

The year 1950 proved to be pivotal for both the termination movement and the Ute tribe on the Uintah and Ouray Reservation. Events were steadily advancing toward a point at which Senator Watkins could realize one of his fondest objectives: to subject the most powerful tribe of his own state to his "Indian freedom program." Before he could do so, however, several significant obstacles had to be overcome. Uintah and Ouray was a long-established reservation with an entrenched BIA presence and educated tribal leaders, and the Utes had no incentive to go along with Watkins's program, regardless of how well supported it might be in Congress. The main problem centered on the fact that the Utes were a historically significant tribe with nearly eighteen hundred members—too large, in other words, to be overlooked by the defenders of Indian rights.

It is doubtful that Watkins could have bypassed these impediments, even with the considerable congressional support he received over the course of the next few years, without the dramatic change in conditions on the reservation that occurred between 1950 and 1954. The person most responsible for creating this change, and the resulting environment that proved to be ripe for exploitation by Watkins, was also an acquaintance of Watkins's, and a fellow Latter-day Saint attorney and Utahn—Ernest L. Wilkinson.

Scarcely a more dynamic, energetic, yet enigmatic attorney ever

practiced within the specialized field of Indian law during the 1940s and 1950s. Wilkinson's achievements in the courtroom and within the anterooms of Congress made him perhaps the most successful Indian claims attorney of his time. As a consequence, most people assumed that his legal advocacy for Indian rights reflected a personal commitment to the cause of civil liberty. Wilkinson *was* an acquaintance of civil libertarians and Indian rights advocates Felix S. Cohen and Helen Peterson, and he served on the board of directors for Arrow, Inc., the fund-raising arm of the National Congress of American Indians, but for reasons that are clear only in retrospect, he kept his personal beliefs about Indians almost entirely to himself.

Wilkinson's practice within the field of Indian law came more by accident than design. In 1928, after a distinguished legal education at George Washington University Law School and Harvard University Law School (where he received a Doctor of Juridical Science degree under the tutelage of Roscoe Pound and Felix Frankfurter), Wilkinson joined the New York City law firm of Hughes, Schurman, and Dwight. He spent five productive years as a permanent member of the firm's staff, and he undoubtedly benefited from the added prestige bestowed on the firm when the senior partner, Charles Evans Hughes, was appointed chief justice of the U.S. Supreme Court. While spending his days practicing law, Wilkinson also held a full professorship at the New Jersey Law School at Newark, where he taught law classes five nights a week. He maintained this grueling schedule until May 1935, when he moved to Washington DC and formed his own partnership with a fellow Utahn and Mormon, Walter G. Moyle.[1] Shortly before he left the New York firm, however, Wilkinson accepted an assignment to examine certain claims of the Ute Indians against the United States. The firm had earlier been approached by Captain Raymond T. Bonnin, who was engaged by the Ute tribe to investigate the possibility of pursuing these claims. The partners in the firm initially declined the case because of the limited prospects of remuneration, but they later decided to accept it on a pro bono basis.[2]

At the time, neither Wilkinson nor anyone else in the firm had any special expertise within the field of Indian law. Nonetheless, Wilkinson met regularly with Bonnin throughout the first half of 1935 and then, with the blessing of the Hughes firm, continued

working with Bonnin on the case as a partner in the new Washington firm of Moyle and Wilkinson. Little did he know then that the Ute litigation would prove to be the most profitable case in a long and successful career in Indian law. Eventually, Wilkinson's law firm came to represent more Indian tribes than any other firm in the United States.[3]

The Big Ute Case, as it came to be known, actually consisted of four separate claims against the United States filed on behalf of the Colorado Utes who had been party to the Agreement of 1880 with the United States. Federal Indian agents negotiated that settlement in the aftermath of the Meeker Massacre in 1879. Previously, the Ute legal claim to land in Colorado rested primarily on the Treaty of 1868, which set aside a strip of the western territory approximately 150 miles long and 105 miles wide for the exclusive use of the Utes, and also the 1874 Brunot Agreement, which ceded 3 million acres in the southern end of the reservation for an annual payment of $25,000. A steady influx of prospectors and ranchers threatened to upend these arrangements before the 1870s came to a close, but the violent outbreak at the Whiteriver Agency in September 1879 provided a more convenient justification for abolishing the treaties.

The "Meeker Massacre," as it came to be known, stemmed in part from Agent Nathan Meeker's heavy-handed efforts to transform the Whiteriver Utes into Christian farmers. A relief column of cavalry sent from Fort Fred Steele in Wyoming escalated the tension and provoked the violent clash that resulted in the death of a dozen soldiers and three times that number of Utes. Meeker and the other men working at the Whiteriver Agency were killed, and their wives and children were taken as captives.

Anxious citizens of Colorado sought retribution by demanding that the federal government remove the Utes from their territory, and the resulting Agreement of 1880 became the instrument of expatriation. The Whiteriver band of Utes, participants in the Meeker insurrection, were relocated to the Uintah Reservation in Utah to live among the various bands of Utah Utes, known collectively as the Uintahs. The Southern and Uncompahgre Utes were to be settled on agricultural tracts along the La Plata and Grand Rivers in Colorado, although the Uncompahgres refused to go to the Grand River area and followed the Whiteriver band to the Uintah Basin instead. For

its part, the government agreed to establish a perpetual trust fund of $50,000 per annum for the Utes and to provide that the funds derived from the sale of their former lands in Colorado would be credited to the respective bands.

In reviewing these events, Wilkinson discovered that substantial tracts of the former Ute lands in Colorado had never been sold. Much of it had been converted to national forestlands or simply remained in government possession because no attempt had been made to sell it. Wilkinson concluded that the government's failure to fulfill its fiduciary responsibility to the Utes constituted the basis for suing the United States for the value of the unsold lands.[4]

Determining the basis for a suit proved to be relatively easy compared to the task of successfully prosecuting these claims in court. The Big Ute Case presented innumerable obstacles. For one thing, all of the Utes who were originally party to these claims on unsold Colorado lands were deceased. For another, federal law prohibited the superintendents of Indian reservations from assisting in any claim made against the United States, which meant that BIA personnel at Uintah and Ouray could not cooperate with Wilkinson. Finally, the most serious obstruction concerned the limitations of the U.S. Court of Claims. In 1868, Congress barred this court from hearing cases brought by Indian tribes, except as authorized by separate jurisdictional acts passed by Congress. In other words, Wilkinson could not bring suit against the United States on behalf of the Ute bands unless Congress specifically enacted legislation allowing him to do so.[5]

Efforts to get a Ute jurisdictional bill through Congress began in February 1936 and continued unabated for two and a half years. Congressional rules made it extremely difficult for Wilkinson to even have the bill considered, since such bills had to appear on the consent calendar and could be passed over upon the objection of a single member of Congress. After failing to get action in 1936, Wilkinson drafted his own version of the bill. Presciently aware of coming impediments, he included provisions dealing with specific aspects of the Ute claim. For example, Wilkinson's bill made it possible for the court to consider Ute lands in Colorado in the same light as if they had been taken by the government under the power of eminent domain, which in effect meant the Utes could recover the value of

mineral and subsurface rights as well as the surface rights to the land.[6] Through a ceaseless lobbying effort and the judicious intervention of the Utah congressional delegation, Wilkinson's bill finally won approval in the House in August 1937 and then in the Senate in June 1938. President Roosevelt signed the bill into law later that month, possibly as a personal favor to Secretary of the Interior Harold Ickes, who favored the bill.[7]

Passage of the Ute Jurisdictional Act did not lead to immediate legal action in the Court of Claims. Wilkinson and his staff first had to undertake a tremendous amount of research into the value of the former Ute lands. In the meantime, Wilkinson continued to expand the parameters of the act through a series of five amendments subsequently passed by Congress between 1941 and 1948. To put this achievement into perspective, it should be noted that during the years Wilkinson lobbied for passage of the Jurisdictional Act and its amendments, 298 Indian jurisdictional bills were introduced into Congress, of which only 15 were passed into law. Five of these bills were Wilkinson's.[8]

As a natural outgrowth of his success with Congress, Wilkinson attracted several other tribes as clients. By the mid-1940s his firm represented the Klamath Indians of Oregon, the Blackfeet tribe of Montana, the Northwest Shoshone and Bannock Indians of Idaho, the Western Shoshone and Paiutes of Nevada, and the Utes of Colorado and Utah. Wilkinson also represented the Menominee tribe of Wisconsin in association with the firm of Dwight, Harris, Kogel and Caskey. In the nine cases for these tribes that Wilkinson successfully brought before the Court of Claims, favorable decisions were rendered in five, with some outstanding issues still pending. However, Interior Department regulations prohibited Wilkinson from collecting any fees until the cases had been completely settled. As a result, over the course of ten years of burdensome litigation Wilkinson had yet to realize any money for the tribes or to earn the slightest compensation for himself or his legal practice.[9]

Particularly galling to Wilkinson was a decision rendered by the U.S. Supreme Court on appeal of a case known as *Northwestern Bands of Shoshone Indians v. The United States*. As tribal claims attorney for these Indians, Wilkinson spent seven years prosecuting the claim and $12,000 of his own money, only to lose by a decision

of five to four. Justice Robert H. Jackson based his majority opinion on the premise that "Indians did not have the conception of a property right" and concluded, therefore, that Indian treaties were not binding legal contracts. His opinion further reasoned that the question of compensation for the Shoshones was for Congress to decide rather than the Supreme Court. Justice Jackson's reasoning so infuriated Wilkinson that he later testified before a congressional committee that he considered the decision "the most reactionary Indian opinion ever delivered by the Supreme Court."[10]

In the meantime, Wilkinson established many contacts in Congress and in the executive branch and developed a reputation as an expert in the field of Indian claims law. On several occasions he testified before congressional committees on pending legislation. In 1940, for example, when the Justice Department sponsored legislation limiting the jurisdiction of the Court of Claims in Indian cases, Wilkinson presented exhaustive testimony to help defeat the bill.[11] His most impressive performance before Congress, however, came in 1945, when he appeared before the House Committee on Indian Affairs to urge the creation of an Indian claims commission. On this occasion he informed the committee members that he had never been very "enthusiastic" about previous claims commission bills, because they invariably included provisions allowing Congress to override awards rendered by the commissioners.[12] In his opinion, this would amount to retrying the cases in the legislative branch and would extend the life of the commission "years longer." Wilkinson favored legislation that would create a claims commission with the power to render judgments with finality and to do so within a set number of years. He testified that he "would be very much in favor" of limiting the claims to a five-year filing period, and added that "the Commission must terminate in ten. I would not like to see a permanent commission here."[13]

After offering his general views on the status of claims litigation, Wilkinson read the text of H.R. 1198, a bill to create a claims commission, and then offered a series of amendments. Many of his suggestions were substantive in nature, including provisions to allow the commission to hear cases filed on the basis of "unconscionable consideration," to disallow government offsets against amounts awarded to tribes, and to deny the government the defense of *res*

judicata in most instances.[14] House committee members were impressed with Wilkinson's recommendations, as was the associate solicitor of the Interior Department, Felix S. Cohen, author of the *Handbook of Federal Indian Law* and arguably the foremost authority on Indian law in the United States. In fact, Wilkinson and Cohen jointly redrafted the bill and then spent two months preparing a comprehensive report on the same for the House committee.[15] After several months of intensive lobbying by Wilkinson and others, the redrafted bill (H.R. 4497) passed both houses, but the Senate version significantly curtailed the more liberal provisions inserted by Wilkinson and Cohen. When the conference committee met to reconcile the two versions of the bill, Wilkinson provided the members with a comprehensive booklet explaining the reasons behind the Senate amendments and the pertinent facts to refute them. Armed with Wilkinson's "bible," House committee members successfully reinstated virtually all of the House provisions, and both houses passed the conference version of the bill on 2 August 1946.[16]

The members of the House Committee on Indian Affairs appreciated Wilkinson's efforts, and one of them, Charles R. Robertson of North Dakota, wrote to him and, after recounting Wilkinson's efforts to testify before committees, draft amendments, and lobby relentlessly, noted: "I have come to regard you in the highest, and am certain that the Indians throughout the country owe you a debt of gratitude for your work. I consider you unequaled as a lawyer in the representation of Indian Tribes." In a letter to another attorney, Robertson offered the opinion that the bill would never have passed Congress without "the constant efforts put forth by Mr. Wilkinson. . . . I will say to you in perfect candor, that Mr. Wilkinson is more responsible for it than any member of Congress."[17]

Wilkinson possessed complex motives for his involvement in creating the Indian Claims Commission (ICC). He knew the difficulties involved in litigating Indian claims. His own experience had been costly and frustrating, and his motivations undoubtedly stemmed in part from a desire to be compensated for his efforts. The drawn-out nature of these cases meant that attorneys engaged in Indian claims cases literally waited for years to collect their fees. Wilkinson noted that an attorney might invest vast amounts of time and labor in a case, placing faith in the justice of the courts, only to find

(as he had in the *Northwestern Bands of Shoshone Indians* case) that the courts might elect not to render a decision and refer the entire matter back to Congress.

It is also interesting that Wilkinson's testimony echoed the prevailing sentiment in the House that the claims commission should be established for a limited duration only. As the leading partner in a firm that specialized in Indian claims litigation, Wilkinson had every reason to favor an extended period for filing claims against the government. The fact that he did not suggests that he had still other motivations for his actions.

At the very time Wilkinson worked in partnership with Felix Cohen to rework the Indian Claims Commission Act, he and the members of his legal staff prepared to litigate a series of important cases for the Ute Indians of the Uintah and Ouray Reservation. In time his actions would reveal a furtive desire to use judgment funds to settle accounts between that tribe and the federal government as a preliminary step toward termination. Did he intend the machinery of the ICC to function in the same manner? Although he never publicly expressed such sentiments, there is one tantalizing (though circumstantial) piece of evidence to suggest that Wilkinson viewed the entire process of claims adjudication as a prelude for ending the trust relationship. In August 1946 he invited Ute tribal members Lawrence Appah, Julius Murray, and Rex Curry to come to Washington DC and accompany him to the signing of the Indian Claims Commission Act in the White House. Also included in the delegation were representatives from two other important tribal clients of the Wilkinson firm: James G. Frechette, chairman of the Menominee Business Committee, and Boyd J. Jackson, secretary of the Klamath Business Committee.[18] Was it mere coincidence that Wilkinson represented the three most prominent tribes subjected to termination in the following decade?

Regardless of the answer to that question, there is little doubt that Wilkinson was also motivated by a deep desire to try to rectify some of the wrongs committed against the Indians by government officials and the American people. His testimony before congressional committees frequently pointed to the many injustices suffered by Indians.[19] In no case was this desire more evident than in his pros-

ecution of claims against the government in the four cases known collectively as the Big Ute Case, which lasted fifteen years.

The most important of these cases sought to recover the surface and subsurface value of 4.4 million acres and the subsurface value of an additional 790,000 acres of Colorado land ceded by the Utes in the Agreement of 1880 and retained by the government. Wilkinson filed the claim on 22 November 1941 and spent the next six years bringing the case before the court. The subsequent cases (filed on 15 October 1945 and 30 December 1946) involved claims for the proceeds of land sold or disposed of by the government, lands set aside as a naval oil reserve, and lands withdrawn for inclusion into national forests.[20] Wilkinson won an interlocutory (provisional) decree from the court that the Utes were entitled to damages in these cases, but the process of determining the amount of the damages and calculating probable government offsets took many years and involved a truly monumental effort to gather evidence. For example, it took two and one-half years for the secretary of the interior just to determine the amount of former Ute land retained by the government. Naturally, determining the valuation of such vast tracts of land proved to be one of the most difficult tasks faced by the prosecution. Wilkinson employed the most competent land appraisers, agronomists, and field inspectors he could find to conduct range surveys and classify the topography and soil conditions. Meanwhile, staff members worked for nearly a year at the National Archives microfilming thirty-six thousand pages of documents dealing with the Ute land claims in an effort to establish prior Ute ownership.[21]

Hearings to determine the surface value of the former Ute lands finally got under way in August 1947 and lasted sixteen consecutive weeks. The hearings produced more than 10,000 pages of evidence, testimony from 180 witnesses, and 34,504 pages of transcript.[22] Following the hearings, both sides had to submit findings to the court —a process that took more than a year—and then on 17 March 1950 the court finally rendered a decision on the damages for the surface value. Wilkinson had won a complete victory: the Ute lands were valued at $1.70 per acre, more than four times what the government had claimed. Following this rather stunning setback, the government began in earnest to negotiate a consolidated settlement for

all four Ute cases. Both sides reached agreement on 13 July 1950: the United States would pay the bands of Colorado Utes $31,938,473—the largest judgment ever rendered against the United States to date.[23]

The successful outcome of the Ute cases constituted Wilkinson's greatest achievement as an attorney. It brought him wealth and a modicum of fame, and perhaps not coincidentally, a calling from the Mormon Church to serve as the president of Brigham Young University.[24] Moreover, Wilkinson clearly deserved the credit. Winning such an immense and complicated set of cases required an extraordinary amount of perseverance and self-confidence. Wilkinson possessed these qualities in abundance, but even he later admitted that the task had been overwhelming. At the hearing on his fee, Wilkinson told the court, "Had I known of the hurdles in the way when I began, I may not have had the courage to undertake this vast litigation. But having started it, I was determined, in the language of my youth in Hell's Half-Acre [Wilkinson's nickname for his childhood neighborhood on the outskirts of Ogden, Utah], that 'Come hell and high-water' I would not quit."[25] The court, in recognition of his diligent work performed on behalf of the Utes, determined that Wilkinson was entitled to 8.75 percent of the $31,938,473 judgment—a fee that amounted to nearly $2.8 million.[26] The fee was so large, in fact, that some members of Congress called for hearings to determine if Wilkinson and other claims attorneys were taking unfair advantage of the Indians.[27]

Without question, the Colorado judgment changed the course of events—both for Wilkinson and for the Ute tribe. According to the complex formula worked out by government and tribal attorneys, the Uncompahgres and White River bands, as the principal aggrieved parties, received 60 percent of the award, while the Southern and Ute Mountain Utes of Colorado received 40 percent. Adjusted for Wilkinson's $2.8 million attorney fee, the Uncompahgres and White River Utes received slightly more than $18 million.[28] Yet these long-anticipated riches generated vexing new questions for tribal leaders and government officials. The most pressing question concerned the matter of access to the funds, for the Ute Jurisdictional Act (in keeping with the usual pattern of such legislation) stipulated that any funds awarded to the tribe would require congressional ap-

propriation. In other words, the Utes might have won an $18 million judgment against the government, but how they used the money still depended on the will of Congress.

Naturally, Wilkinson had his own ideas about how the tribe should make use of the funds. These he shared with very few others, and then only discreetly. To answer the demands of the newspapers, Wilkinson had his firm prepare a lengthy press release in advance of the news of the settlement. Most of the document simply explained the Ute cases and gave details of the settlement, but in an attempt to clarify the issue of how the money would be used (and especially to dispel fears that the Indians would simply be given the money), the press release noted the following:

> The $31,500,000 will not be immediately paid to the Ute Indians as it would be in the case of white citizens. Instead, it will be deposited in the Treasury of the United States, and Congress, from time to time, will decide how it should be spent for the benefit of these Indians. In total amount, it represents over $10,000 for each man, woman and child in the Ute Tribe. At the present time the Utes are divided into three different groups, each of which has a Business Committee which largely governs the affairs of each group of Indians, [and] they contemplate using large parts of the fund for housing, better medical care and hospitalization, the construction of additional schools, and the building up of a large livestock industry for the Indians.[29]

The foregoing made it sound as if the tribe, working cooperatively with Congress, would decide how to appropriate the money. But the document went on to suggest how this might be accomplished: "The awarding of these large judgments to the Ute Indians, it is planned, will make them self-supporting and probably make it unnecessary for the government to continue large appropriations for the support and education of these tribes."[30]

Most readers probably failed to discern the meaning of this last point, coming as it did near the end of the rather long press release. But a close reading renders at least two important revelations: first, that the awarding of the judgment money would eventually result in termination of the Utes (or something very near to it); and second, that such an outcome had, in fact, been planned.

The question is, planned by whom? If Wilkinson had been plotting with terminationists in the BIA, he conducted his business in a very confidential manner, because no public or private records to that effect have yet emerged. A more likely scenario is that Wilkinson harbored terminationist sentiments but possessed enough professional acumen to keep them to himself. In this fashion he could work in concert with those in government who shared his objectives while simultaneously protecting his reputation as a defender of Indian rights.

That Wilkinson possessed a reputation as an Indian rights advocate is beyond dispute. His previous involvement with Felix Cohen in drafting the Indian Claims Commission Act led many activists to assume that he shared their devotion, and the favorable judgment in the Big Ute Case enhanced this image considerably. After news of the settlement appeared in the press, Wilkinson regularly received solicitations from Indian rights organizations for contributions or assistance, as well as correspondence from leading rights advocates Helen Peterson of the National Congress of American Indians and Oliver La Farge of the Association on American Indian Affairs. Cultivating a reputation as a defender of Indian rights made good sense from a business point of view and brought many new clients to Wilkinson's firm, yet in virtually every instance Wilkinson maintained a polite distance from these groups. In June 1950, for example, La Farge wrote to Wilkinson requesting information for an article he was then writing for the *Atlantic Monthly* about American Indian civil rights. La Farge wanted to know if Wilkinson would share with him "specific citable instances" of discrimination toward Indians, but he received only the cool reply, "I regret that I cannot comply with your request immediately. At this particular time I am unusually busy with the litigation of several large cases."[31] It is true that Wilkinson's practice kept him very busy, but his response to La Farge seems unusual when compared to the volume of correspondence Wilkinson maintained with friends, Mormon Church leaders, and other acquaintances. In most instances, Wilkinson proved more than willing to tender assistance in matters he considered important.

The truth is, Wilkinson did not share Indian rights advocates' enthusiasm for a pluralistic society. He was a devout, conservative Mormon who firmly believed in the Book of Mormon doctrines con-

cerning the origin and destiny of American Indians. He never publicly expressed an admiration for Indian culture or any particular desire to see it preserved. Wilkinson kept his opinions to himself, however, since he relied upon Indian tribes to make up his clientele.

After the settlement of the Ute cases, the world of Indian affairs occupied considerably less of Wilkinson's time and energies. Not long after he had exchanged letters with La Farge, Mormon Church leaders offered him the presidency of Brigham Young University. He accepted in July 1950 and spent the next six months finishing his work on the Ute cases (including matters related to his fee) so that he could move to Provo and assume his university responsibilities early in the new year. But Wilkinson did not formally resign his position in the Wilkinson, Cragun and Barker law firm. Instead, he established a working arrangement with his brother Glen A. Wilkinson. Hereafter, Glen would manage the Washington office and forward all pertinent business to Provo, allowing Ernest to continue working as both claims attorney and university president.[32]

The walls of academia, however, could not shelter Wilkinson from the gathering storm in Indian affairs. Over the next few years, as the termination movement gathered momentum in both Congress and the BIA, Indian rights advocates continued to press Wilkinson to lend his influence in opposition to the new policy. Just as before, Wilkinson preferred not to be become involved, except he now found it more difficult to maintain his distance. Most of the tribes he earlier represented before the Court of Claims (and in some cases continued to represent before the ICC), including the Menominees, Klamaths, Utes, and Turtle Mountain Chippewas, were specifically targeted for termination. In large part this peculiar circumstance was owing to Wilkinson's effectiveness as a claims attorney, since all of these tribes were then in the process of winning, to varying degrees of success, large settlements against the United States.[33]

The actual selection process seems to have been under the primary control of Watkins's Subcommittee on Indian Affairs. Although the Utah senator and his committee colleagues based their decisions more on ideological considerations than actual readiness, success in the courts undoubtedly worked against tribes that won favorable decisions. Committee members found themselves equipped with a potent argument for terminating specific tribes: since

past grievances had already been adjudicated for these Indians, the government no longer "owed" them anything. Wilkinson bore the responsibility for this development more than anyone else. In fact, he generally agreed with this line of reasoning, and as long as Watkins and his committee adhered to it Wilkinson had little reason to oppose the termination process.

As members of the close-knit Washington Mormon community, Wilkinson and Watkins were well acquainted and shared many of the same perspectives on religion and government. When Watkins entered the Senate in 1947, Wilkinson sent him reading material on Franklin D. Roosevelt that portrayed the former president in a very negative light, and over the years they continued to exchange articles and notes on perspectives they held in common.[34] Both were anti–New Deal conservatives and stridently opposed to what they considered "paternalistic" government. As a United States senator, Watkins's views were well known to his constituents and anyone else who cared to follow proceedings in Congress, but in the early 1950s Wilkinson's were decidedly less known. Few people realized that he was every bit as ideologically committed to conservatism as his senatorial counterpart. Wilkinson later wrote that he became disenchanted with the Democratic Party in the 1930s because he "could not reconcile the amalgamation of more and more powers in the growing federal bureaucracy with what he believed the United States Constitution specified."[35] By 1945 he had become an ardent opponent of the Roosevelt and Truman administrations, and in August of that year he delivered an address in Washington DC in which he stated that "there can be no greater menace to our country than the doctrine preached by some in high places—that our country owes us a living. If that doctrine be accepted by the majority of the people, we are in a great danger as a Nation."[36] Later in life Wilkinson repeatedly denounced what he called "socialism," or more particularly the "welfare state," which he said "debases and deprives man of his free agency, and which unless arrested, will ultimately spell the doom of our Republic."[37]

It is not hard to see how Wilkinson's personal ideology led him to privately support Watkins's efforts to demolish the BIA, given the paternalistic relationship between the bureau and Indian tribes. But Wilkinson also shared another common bond with Watkins: a life-

time of activity in the Mormon Church. Both men were participating members of the Washington DC congregation, and Wilkinson seems to have admired the way the senator blended his church and civic duties. In the summer of 1950 he authored a brief article about Watkins's church service that appeared in *The Chaplain*, an army/navy journal for Protestant chaplains. Wilkinson took care to notify church leaders of his efforts to promote the Mormon senator, and the article was subsequently reprinted in the church-owned *Deseret News* and was also noted in the *Church News*, a weekly supplement to the Salt Lake City newspaper.[38]

Wilkinson's apparent esteem for Watkins reflected that of many church leaders and members. As the termination effort gathered momentum, other Mormons also privately supported Watkins's efforts to "free" the Indians and abolish the BIA. In February 1952 the *Church News* reprinted an editorial from the *Los Angeles Herald Express* that raised the question, "As we celebrate 'Bill of Rights Week,' shouldn't we also do something about providing a Bill of Rights for the American Indian? Shouldn't we free him from the virtual slavery imposed upon him by the grasping greediness of the Indian Bureau? . . . Why don't we smash this bureau once and for all and give the Indian the chance to be proud of the fact that he is an American?"[39]

Arthur Watkins could not have expressed these sentiments better if he had written the editorial himself. But some church leaders were more temperate than the editors of the *Church News*. In particular, Elder Spencer W. Kimball, a member of the Quorum of Twelve in the leadership hierarchy and a longtime advocate for Indian members of the church, wanted to know what Wilkinson thought about the termination issue. In July of the same year Kimball forwarded to Wilkinson a letter from a church member who had complained of her dealings with the BIA, and he took the opportunity to ask Wilkinson his feelings on the subject. Responding directly to the woman's criticisms in his reply to Kimball, Wilkinson offered a rare, candid expression of his views:

> I suspect that her main purpose is to have something done about the Indian Bureau, about which all indians [*sic*] complain, but very few have any constructive suggestions. I hold no brief for the

> Indian Bureau. I would be inclined to liquidate it as soon as possible, i.e., as soon as the indians on the respective reservations are able in any way to govern themselves. The tragic thing however, is that bills were introduced in the last Congress to that purpose and the Indian Commissioner announced his intention of giving up supervision of certain indian reservations, whereupon the indians of those reservations reversed their attitude and didn't want to be made free. This situation spells out what has always been my feeling. When once you force upon a people governmental paternalism, it is extremely difficult to ever get rid of it. The indians really expect the government, in large part, to take care of them. Yet I know that they have many things [of] which they can justly complain.[40]

From the perspective of his own experience, and as a result of a long legal relationship with Indian groups around the country, Wilkinson knew full well that Indians as a people had been much wronged. But as an ideological conservative and devout Mormon he thought only in assimilationist terms and, like Watkins, never seemed to consider that there might be something in Indian culture worth preserving. He differed from his senatorial counterpart only in the degree of his experience, which at least provided him a basis for understanding that the process would require a certain amount of time. It is doubtful that Wilkinson envisioned a grand program for "liberating" Indians in the same way Watkins did, but his Mormon theology and conservative nature at least led him along the same ideological path.

After assuming the presidency of Brigham Young University, Wilkinson converted to the idea that education held the key to the assimilation process. He went to great lengths to obtain federal funds to educate Indian students at the university. At one point he even suggested that special efforts should be made to recruit members of the Ute tribe in the hope that tribal leaders might be induced to donate some of the Colorado judgment money to the school.[41]

In the meantime, Ute tribal leaders busily worked out the details of a comprehensive plan to use the judgment funds for the betterment of the tribe, and the evidence suggests that Wilkinson had a hand in this effort as well. But before anything could be presented to Congress—or, for that matter, before Wilkinson could even claim

his attorney fee for the Ute cases—an agreement had to be reached on the Uintah and Ouray Reservation on how the money would be divided between the three bands. Strictly speaking, the money belonged only to the bands expatriated from Colorado—the Uncompahgre and Whiteriver bands—since the Uintah Utes of Utah had not been a party to the litigation. However, the issue was complicated by the fact that Uintah Utes had been forced to share their reservation with the two Colorado bands without compensation for the past seventy years, and in 1937 they had incorporated with the Colorado bands under the provisions of the IRA. Thus, from a legal perspective all three bands existed as one tribe. In reaching a settlement in the Big Ute Case, both Wilkinson and the attorney general, Howard McGrath, feared that if the judgment monies were not shared equally between all three bands, the Uintahs might file suit against the other two bands, the tribal government might dissolve, and the negotiated settlement might become entangled in a web of charges and countercharges. Wilkinson must have also realized that such an eventuality, should it come to pass, would postpone the settlement indefinitely, to say nothing of his long-awaited attorney fee.

The Uncompahgres and the Whiterivers had no obligation whatever to share the judgment funds, a fact that complicated the situation tremendously. Moreover, an attempt to impose an agreement requiring them to share their money with the Uintahs would leave the government liable for misappropriating it.[42] Any solution Wilkinson and the government officials reached, therefore, had the potential for decisively altering the future of all three bands—collectively and individually.

The settlement provisions negotiated by Wilkinson and the Justice Department officials ultimately had exactly that kind of impact. In the beginning, however, the attorneys decided that the best course of action was to try to convince all three bands to share the money of their own accord. For Wilkinson, it meant personally traveling to Uintah and applying his considerable powers of persuasion on the collective tribal membership. The rewards inherent in the strategy seemed to outweigh the risks, so Wilkinson arranged a special three-day conference with the tribe, to be held 29 May through 1 June 1950. As a last precaution, he also discussed the proposed settlement with Senator Watkins, who offered his full support.[43]

The most important meeting was a General Council session held the first day. Only the Uncompahgres and Whiterivers were specifically invited. Wilkinson attended, accompanied by his associate John S. Boyden, the tribal legal council and affiliate of the Wilkinson, Cragun and Barker law firm; Rex Curry, chairman of the Tribal Business Committee; and several members of the local and national press. Wilkinson fully understood the import of what he needed to accomplish, but like any good lawyer, he turned the tables on the tribal membership and made it seem as if they were responsible for the arrangements that had already been reached. He opened the conference by stating, "This is probably the most important meeting that you Ute Indians have had since the Whiterivers and the Uncompahgres were driven from the State of Colorado and placed on this reservation."[44] He then informed the assembled Utes of the details of the settlement: the Uncompahgre and Whiteriver bands would receive their share of the $32 million judgment, *provided* they approve the terms negotiated with the Department of Justice. But therein lay the difficulty. The judgment applied only to the Colorado bands and not the Uintahs. Wilkinson obviously hoped for a demonstration of tribal unity at this point, but he was quickly disappointed. No one volunteered the idea that the funds should be shared by the three bands. In fact, one old gentleman offered the opinion that the money should be retained by the Uncompahgres and the Whiterivers as a method of keeping it out of the hands of the mixed-bloods Uintahs.[45]

Realizing that his strategy verged on failure, Wilkinson seized the offensive. He told the assembly, "You seem to think that you can settle this case without settling the dispute between yourselves. You can't. The Attorney General has already told me he will not consent to any settlement in this case unless you Indians get together and settle your own differences."[46] He then offered a long recital of the advantages the Uncompahgres and Whiterivers received by living on Uintah land—including per capita payments derived from oil royalties. The argument had a telling effect. Wilkinson asked them to consider the loss of all future oil and mineral revenues, which legally belonged only to the Uintahs. He also pointed out that the Uintah Utes had their own claim pending before the ICC, the proceeds of which would be similarly distributed between the bands. In short, he

argued that the three bands should pool their resources and operate as one tribe.[47]

Unfortunately, Wilkinson presupposed a degree of unity that did not exist on the reservation. The tribal elders of the Uncompahgres and Whiteriver bands asked for more time to consider the issue, but Wilkinson and his associates countered that the tribe had to decide immediately or wait another year for a new session of Congress to appropriate funds. As tensions mounted, some of the elders turned their anger toward the Tribal Business Committee and its chairman, Rex Curry, for not keeping the tribe informed of these surprising new developments. Even Oran Curry, an Uncompahgre elder and Rex's father, turned to his son and said, "One party here isn't going to do our business for us," thereby insinuating that the Business Committee members were guilty of duplicity.[48]

With the meeting rapidly unraveling, Wilkinson informed the assembly that he had to travel back to Washington immediately and that Attorney General McGrath awaited their decision. Oran Curry again argued against haste. "We've waited these thirteen years," he said. "I think we can still wait again. Another five years won't matter."[49] Other tribal members argued that they needed the money desperately and could wait no longer. As the meeting dissolved into bickering, many Uncompahgres and Whiterivers walked out. Even the few members of the Uintah band in attendance argued that the matter should be settled between the three bands, since their own future interests were at stake and most of the Uintahs were not even present. Nevertheless, Wilkinson and his associates called for a vote of the Uncompahgres and Whiterivers on the proposal to share the judgment money with the Uintah band, and only 121 members raised their hands. The majority of those still in the hall (only 246 members of the two bands remained) refused to vote either way on the measure.[50]

Wilkinson had his agreement, or at least he interpreted the vote that way. Specifically, Tribal Resolution no. 3 (formally adopted on 3 June 1950 by the Tribal Business Committee on authority of the vote in the General Council) stated that (1) ownership and distribution of funds derived from judgments against the United States, (2) the land within the Uintah and Ouray Reservation, and (3) oil and mineral incomes derived from the reservation land all belonged to

the Indians of the Ute tribe "without regard to band derivation."[51] Justice Department officials apparently had concerns about the adequacy of the resolution, because they further required the Tribal Business Committee to sign a formal release statement protecting the government from possible suits by stipulating that the government was not a party to the agreement and not responsible for implementing it.[52] These concerns paled in comparison to Wilkinson's. He felt that a release statement, though a positive step, was still insufficient, and he took the matter several steps further by directing his brother in the Washington office to draft the agreement into legislation and offer it to Senator Watkins's Subcommittee on Indian Affairs.[53] Watkins shepherded the bill through Congress without difficulty, and the Utes duly found that their "agreement" had acquired the additional force of federal law.

The fact that Wilkinson resorted to such extraordinary measures reveals the precarious nature of the "share and share alike" agreement he engineered. Even as a Washington claims attorney, he had little experience in actual tribal affairs and had not fully appreciated the depth and seriousness of the divisions between the three bands. After the 29 May meeting, however, he acted swiftly to solidify the arrangement. On 26 July he again visited the reservation and met at length with the Tribal Business Committee. He had much to report as to the status of the Colorado settlement and related issues. Wilkinson asked the committee to make a review of his services for the government and to decide how to pay John Boyden for his negotiations with the Southern and Ute Mountain Utes. He wanted to know, for example, if Boyden's services should be charged against his own commission. These actions corroborate the view that once the settlement had been reached with the Department of Justice and the two Colorado bands, Wilkinson turned his attention to collecting his fee.

One issue remained, however, and it threatened to unravel the entire settlement: the ongoing dispute between the mostly full-blood members of the Uncompahgre and Whiteriver bands and the mixed-blood members of the Uintah band. The controversy that surfaced at the 29 May General Council meeting represented only the tip of the iceberg, as arguments about how these mixed-blood people gained membership in the tribe and what to do about them

had occupied the tribal members for decades. The Uintah Utes had a history of intermarriage with non-Indian populations that dated back to the years of pioneer settlement in Utah. Many of the mixed-bloods were also descendants of other tribes—mostly Shoshone, Paiute, and Navajo—whose ancestors had married into one of the several Utah bands that came to be known as the Uintahs.[54] Wilkinson had a solution for this problem as well. Although the minutes of the 26 July 1950 meeting curiously make no mention of the matter (possibly because Wilkinson preferred to keep it from tribal scrutiny), the Tribal Business Committee debated and passed a new ordinance defining "Indian blood" for purposes of future membership. The new ordinance simply stated that "all Indian blood possessed by persons whose names appear on the census roll of July 1, 1935 shall be deemed to be Ute Indian blood."[55]

Wilkinson probably proposed (or at least supported) this effort because he saw it as a method of defusing the mixed-blood controversy, since it made all tribal members equal as far as tribal descent was concerned. According to the ordinance, Indians adopted into the tribe from other tribes prior to 1935 would be defined as Utes, or at least whatever degree of Indian blood they possessed would be considered Ute blood. But Wilkinson's efforts contributed only to the latest in a long series of attempts on the part of the Tribal Business Committee to settle the issue. The mixed-blood controversy had been simmering throughout the previous spring and into the summer, and with the news of the settlement in the Colorado cases the issue finally came to a boil.

The 26 July 1950 ordinance was designed to support another one passed by the Tribal Business Committee on 17 March 1950. The earlier effort restricted future membership in the tribe to persons possessing one-half or more "Ute Indian blood." Bureau officials mishandled the ordinance passed in March, however, necessitating a series of corrections. Eventually, Rex Curry wrote a long letter to Interior Secretary Oscar L. Chapman explaining the entire situation. Curry argued that the mixed-blood question had been one of "long controversy" on the reservation, one that "flared up" from time to time, especially when the tribe distributed per capita funds. He went on to note that the discovery of oil on the reservation, combined with the announcement of the Colorado judgment

against the United States, had the effect of attracting many "bona-fide [*sic*] Ute Indians" back to the reservation, where they were nonetheless "regarded with suspicion." Curry also took note of the small group of Uintah mixed-bloods who had earlier petitioned Watkins asking for the repeal of the IRA, but he incorrectly assumed that they wanted nothing more than individual allotments and a lifting of restrictions on tribal enrollment. Naturally, full-blood Utes were alarmed by these developments. It seemed to many, Curry noted, that "the majority of the mixed blood Indians have had little to do with tribal government but seemed to be the first to ask for loans, free wood, poles, posts, grazing etc."[56]

For all of these reasons, real and imaginary, the full-blood leaders sought to restrict tribal membership. They encountered many difficulties. When the Tribal Business Committee first attempted to change the tribal membership provision to one-half (or more) Ute blood in March, tribal superintendent Forrest R. Stone doubted the legality of the proposal, and instead of signing it and forwarding it to the secretary of the interior, as the ratification process required, he sent the ordinance to an attorney for a legal opinion. Meanwhile, bureau officials knew nothing of the new membership ordinance until Wilkinson informed them of its existence, whereupon Erma O. Hicks, acting chief of the BIA's Division of Tribal Relations, immediately wired the tribe and asked for a copy.[57]

Stone's action, or rather lack of action, effectively scuttled the ordinance, since by law he had to sign it within ten days and forward it to the secretary of the interior for approval within ninety days. Further attempts of the Tribal Business Committee to get the secretary to review the matter only muddled the situation, since a hastily drafted second ordinance called for a restriction of tribal membership to those of one-half (or more) *Indian* blood—and failed to include the important *Ute* qualifier in the definition.[58] Befuddled bureau officials had no choice but to rescind the ordinance, although with some apparent reluctance. One internal BIA memorandum characterized Stone's action in withholding the original ordinance for more than ninety days as "inexcusable."[59]

At any rate, Wilkinson supported the 26 July 1950 ordinance as a method of clarifying the tangled mess of tribal membership and protecting his "share and share alike" agreement upon which the

Colorado judgment was based. As previously noted, this third attempt to rectify the situation simply stated that those persons whose names appeared on the tribal rolls as of 1 July 1935 were deemed to have "Ute blood." Curry explained in his letter to the secretary of the interior that redefining blood quantum in this way meant the tribe would not need to go beyond 1935 to determine the degree of Ute Indian blood for future members. In every respect, the 26 July ordinance reflected Wilkinson's desire that the tribe function as a unified whole rather than by band or tribal ancestry. He undoubtedly knew that intratribal squabbling over the judgment monies had the potential to unravel the entire Colorado settlement, which legally required that the three Ute bands at the Uintah and Ouray Reservation accept the funds as a whole or not at all.

The tribe's mixed-blood members probably would have welcomed Wilkinson's approach to solving the membership controversy had they been aware of it, since they already had serious reservations about the earlier ordinance. By requiring one-half Ute blood for future membership in the tribe, the Tribal Business Committee inadvertently disinherited the future heirs of current members. In September, Elizabeth Curry Bumgarner, Rex Curry's sister, organized a protest against the ongoing attempt to restrict tribal membership. She and more than sixty other prominent members of the mixed-blood faction (chiefly Uintah band members) drafted a resolution questioning the logic and the legality of these ordinances. They noted that it unfairly discriminated against the more mixed Uintah heirs, despite the fact that the reservation now belonged to the "Ute Tribe as a whole" and not to specific groups. The petitioners also pointed out that the ordinance placed an undue restraint on marriage, which not only restricted the rights of parents to pass on inheritance to their children but also potentially encouraged "unlawful cohabitation."[60]

The mixed-blood group's "restraint on marriage" argument must have provoked the consternation of bureau officials and members of the Tribal Business Committee, because they had already been warned of potential legal complications arising from just such a predicament. In 1947 the Business Committee had requested a legal opinion from the Wilkinson, Cragun and Barker law firm on an earlier proposal for a blood quantum restriction on membership and

received a discouraging response. The Wilkinson firm found legal precedents dating back to 1897 that upheld the rights of mixed-blood offspring of tribal members. The firm also found that section 19 of the IRA rendered it "mandatory that individuals with a quantum of Indian blood of 50 percent or greater be accorded membership in the tribe." Research into the status of the mixed-blood Utes yielded an even more significant deterrent to tribal attempts to curtail the rights of these people: according to tribal lore, the mixed-blood families adopted into the tribe—the Shoshones, Paiutes, Bannocks, and so forth—were adopted under a provision that their children marry tribal members. The full-blood Utes argued that the mixed-bloods never kept this promise. However, the firm found that such a contract, if it ever existed, would be "void from the beginning" because it would function "in restraint of marriage."[61]

For the time being, bureau officials decided that they could afford to wait and allow the Utes time to resolve the disagreements among themselves. In part this attitude derived from the fact that the BIA was itself divided into factions over the termination issue and the fate of tribes receiving large judgments in claims cases. But not everyone could wait. Many on the Uintah and Ouray Reservation needed money desperately and anxiously waited for the tribe and the bureau to settle on a formula for distributing it. Finding a solution, however, proved much more difficult than anyone could then imagine.

In less than four years, disagreements over who would be entitled to these funds and how the money would be utilized by the tribe pitted the full-blood Colorado bands against the mostly mixed-blood Uintah Utes, thereby destroying the fragile balance between them. In mid-1950, however, the equilibrium was preserved, largely because the goals and objectives of the mixed-blood group paraleled Wilkinson's own. At the time, Wilkinson sided with the mixed-bloods in desiring to have the tribe function as a whole rather than by factions. Both wanted the Colorado judgment funds to be distributed to all members in a manner that would accelerate the development of the tribe and its resources. Since the mixed-bloods represented the more acculturated elements of the tribe, it seemed logical that they would make the best use of funds in the interim. Bumgarner took up this line of reasoning with the secretary of the inte-

rior in the cover letter she wrote for the mixed-bloods' protest resolution. She pointed out that the ordinance would either prevent the tribe's assimilation or leave its vast resources in the hands of a few. Her telling argument identified the illogical reasoning of those who sought to assimilate a people by removing the most acculturated members.[62]

Officials in the Interior Department forwarded Bumgarner's letter directly to the office of the commissioner of Indian Affairs, Dillon S. Myer. As one of the leading advocates of termination policy, Myer could not possibly have been sympathetic to a plan that would frustrate the forces of assimilation. In the heady days of 1950, Myer and his confederates in the BIA did not see the need for selective membership ordinances. They assumed that with the legislative assistance of Senator Watkins, the legal skill of tribal attorney Wilkinson, and a payoff of $18 million, the entire tribe could be maneuvered into termination.

3 THE THREE-YEAR PROGRAM AND ECONOMIC BLACKMAIL

The events bridging the Colorado judgment award in 1950 and Senator Watkins's 1954 campaign to terminate the Utes marked a period of experimentation and preparation for both tribal and governmental leaders. In Washington, members of Congress debated and then embraced the philosophy of termination but left the actual task of creating terminal programs with the Bureau of Indian Affairs and tribal leaders. BIA officials, meanwhile, heeded the legislative mandate and began collecting information about specific tribes deemed capable of assuming the responsibilities rendered by the federal government. The $18 million Colorado judgment moved the Ute tribe directly into this category, despite the fact that bureau officials had previously considered the tribe ill-prepared for termination. Tribal leaders suddenly found themselves responding to the demands of bureau and congressional policy makers, while tribal factions fought over control of the money. The ensuing disagreements reflected deep divisions within the tribe itself, and as termination philosophy matured into policy these accumulated pressures threatened the fragile equilibrium that existed between the three Ute bands.

These fissures became more pronounced over the course of the three-year program. Meanwhile, following settlement of the Ute cases, the termination issue again came to the forefront in Congress,

and just as before, the leading proponent was a former judge from Utah. But this advocate of termination policy differed from Senator Arthur Watkins in several significant ways. Congresswoman Reva Beck Bosone represented Utah's Second Congressional District—a constituency dominated by independent Salt Lake City voters who sometimes defied the traditional, Mormon-dominated patriarchy of Utah politics. Bosone's election in 1948 constituted a case in point. She was the first woman ever to serve Utah in Congress, just as she had been the first woman to serve as judge in a Salt Lake City court. In earlier years, as a member of the Utah legislature, she fought for minimum wage laws and child labor reform as a New Deal Democrat. Bosone made a career out of challenging the existing order: she was divorced, she practiced liberal politics, and most significantly (despite her pioneer ancestry), she chose not to affiliate herself with the Mormon Church.

Bosone may have taken up the regionally potent political question of Indian affairs precisely because it offered an opportunity to intrude into one of Senator Watkins's areas of legislative responsibility. Perhaps she wanted to demonstrate that Indian policy could be formulated in a less ideological way. Her policy seems to have been one of co-optation: stealing Watkins's thunder by sponsoring a more enlightened, humanitarian program of termination than the one he proposed.

Whatever her motives may have been with regard to Watkins, Bosone also believed strongly in the capacity of Indian people to manage their own affairs. She later explained that when she first came to Washington she thought of Indians only as government wards needing to be protected and "coddled." With more experience, however, she found Indian people to be full of ability, intelligence, courage, and what she called "a fine and common sense attitude toward the white man." This new awareness induced her to promote legislation to help tribes prepare for termination, because, as she said, she had a "profound respect for the Indian and a deep interest in seeing that he gets a square deal." She also noted that "there is no reason why he should continue always as a baby in the arms of the Government."[1]

Like most members of Congress, Representative Bosone defined the federal trust relationship in terms of wardship status. Her ap-

proach to termination emphasized tribal preparedness and careful planning as the key to successful "programming," and she included both elements in House Joint Resolution 490, which she sponsored in July 1950. Specifically, her resolution authorized the secretary of the interior to conduct a study of the tribes under his jurisdiction in order to determine "the respective qualifications of such Indians to manage their own affairs without supervision and control by the Federal Government." The legislation initially provided $250,000 to conduct the study, but the economy-minded House (with Bosone's approval) reduced this amount to $50,000.[2]

Bosone also wanted to know which of the tribes targeted for termination were actually ready to be subjected to the process, and she insisted that they be given the opportunity to consent to it. "I have no idea whatever," she argued, "and it certainly is not the purpose of the bill, to release tribes, bands and groups of Indians who do not give their consent and who are not prepared."[3] Even though House Joint Resolution 490 appeared to be a relatively moderate approach to termination, influential policy makers and Indian rights advocates were divided in their response to it. After some initial concerns, Secretary of the Interior Oscar Chapman came to favor Bosone's resolution, but his support evoked powerful opposition. In an exchange of letters with former BIA commissioner John Collier, who inquired about the proposal, Chapman defended the resolution on the grounds that the proposed study would be constructive and inexpensive. Counting travel and expenses, he felt that the proposed $50,000 would provide for "twenty-five persons, scattered throughout the United States" to conduct studies of tribal readiness.[4]

Collier had little patience for such expedients. His response to Chapman demolished the notion that twenty-five inexperienced individuals would be able to reach "in one year an understanding of the myriad complexities, deep in time, of Indian life and Indian-white-governmental relations, and are to 'program' these understandings and 'develop' them in full cooperation with (the) Indian groups. . . . They will be, presumptively, like your present Indian Commissioner, that kind of administrative expert *in vacuuo* who do[es] not require knowledge of, [or] experience in, subject-matters."[5]

Collier went on to deny that Chapman's investigators could

possibly accomplish these things. Moreover, he continued, "one thing they can do; they can apply rough-shod a pre-ordained unrealistic formula of over-simplification and 'liquidation,' exactly as the Bosone Bill intends that they shall do." He then predicted, with remarkable foresight into the eventual results of termination policy, that these "administrative wizards will whisk whole communities and tribes of Indians toward economic and social confusion." Collier concluded his denunciation with a sharp warning: "There are scandals of intellectual irresponsibility; scandals of . . . gross blunder flowing from ignorance. How terribly loaded is Indian affairs history with this fact. There is scandal in the Bosone bill."[6]

As the legislation progressed through the House, Collier continued his letter-writing campaign, arguing that the legislation's real intent was to "deprive the Indians of services, property and other rights guaranteed under solemn treaty. It specifies the ends in advance, and does not provide adequate funds for such a comprehensive investigation." He dismissed Bosone as a "relative newcomer" to Indian affairs, an appellation he also bestowed on another Utah termination advocate, Associate Commissioner H. Rex Lee.[7] Collier correctly identified Lee, a Utah Mormon and acquaintance of Watkins's, as an important figure in the pending ideological combat over termination. But he overestimated the significance of Reva Beck Bosone. Ultimately she proved to be like many members of Congress in that she showed great enthusiasm for termination as an abstract principle but could not support nonconsensual legislation for specific tribes.

Like Collier, Watkins also perceived a threat in Bosone's approach to the termination issue, but for different reasons. Watkins saw the resolution as a direct challenge to his legislative prerogatives, even though in the anterooms of Congress his influence greatly overshadowed Bosone's. For that reason Collier need not have worried about House Joint Resolution 490, because to the surprise of many, especially Bosone, Watkins came out in opposition to the measure and helped to defeat it in the Senate.

When the resolution came before the Senate for consideration, Watkins objected and the legislation was passed over. At the same time, he took the opportunity to issue a statement about the legislative intent of the tabled resolution. He began by assuring the assem-

bled body that he wanted to do everything possible to "help the American Indians become independent and self-supporting American citizens. The sooner that result can be accomplished," he continued, "the better it will be for the Indians and for all the rest of us." Then came the gist of his argument: "Our government has been the guardian of the Indians for over 100 years. On the surface it would appear to be entirely unnecessary now to authorize the Secretary of the Interior to make a study of these Indians to determine their qualifications to control and manage their own affairs. If the Bureau of Indian Affairs has not made that study in the last 100 years, and if it now does not have a definite program for the emancipation of Indians, it would appear to me that it would be a waste of time and money to ask that Bureau to undertake the job now."[8]

Rejecting the need for further study, Watkins argued for action—as he said, the sooner the better. And so the Senate went on to other things. When Bosone heard that Watkins had objected to consideration of the resolution, she was "shocked and amazed. . . . There is no politics in this bill, but I am led to believe that Senator Watkins's objection was made purely for political reasons."[9] Bosone was mistaken in this regard, for Watkins had no overriding political agenda in the area of Indian affairs, at least in the partisan sense. His motives for halting Bosone's resolution might have been better described as ideological, for he had few qualms about collaborating with Democrats, even career New Deal administrators, if their views on termination coincided with his.

Watkins insisted that the time had arrived for action because at that moment he had the full cooperation of the leadership of the BIA. Since May 1950 the bureau had been under the direction of Dillon S. Myer, a former New Dealer with vast administrative experience and, even more importantly, a man thoroughly sympathetic to the goals of termination. He was, as John Collier described him, exactly that kind of "administrative expert *in vacuuo*" who lacked the requisite experience in working with Indians.[10]

Much has been written about Myer and his objectives as commissioner of Indian Affairs. During World War II he served as the director of the Wartime Relocation Authority (WRA), the agency responsible for operating the relocation camps that housed Japanese

aliens and Japanese-American citizens. The WRA practice of relocating these people into the interior of the United States as a means of accelerating their assimilation into American society not only generated a considerable amount of controversy for Myer but also demonstrated his bureaucratic solution for dealing with these disparate (Nisei and Indian) ethnic enclaves. There was, as Myer's biographer has demonstrated, a certain superficial similarity between wartime relocation camps and Indian reservations.[11]

Myer's administration of the BIA met with the criticism of Indian rights advocates almost from the beginning, in large part because of his inexperience. His predecessors in the commissioner's office generally possessed at least an understanding of the myriad obligations and agreements that governed relations between the tribes and the bureau. Myer had no particular expertise in these matters, nor did he feel that he needed to understand them, since his overriding objective was to sever these relationships. Moreover, to facilitate his crusade against the existing order, Myer systematically removed some of the best-qualified and most experienced administrators in the bureau, including Assistant Commissioner William Zimmerman and Chief Council Theodore H. Haas. Several others soon resigned, among them Assistant Commissioner John Provinse; chief of the Branch of Education, Willard H. Beatty; and head of the Division of Tribal Relations, D'Arcy McNickle. Myer replaced several of these administrators with former WRA officials who, without exception, lacked experience working with Indians. On the reservation level the situation was much the same. Some of the most experienced superintendents retired or resigned, only to be supplanted by unqualified appointees. In one case, Myer replaced a superintendent in Alaska with a former FBI agent; in another, he replaced the Blackfeet superintendent in Montana with the former warden of a WRA detention camp.[12]

Myer's efforts to recast Indian administration dramatically shifted the direction of policy away from the developmental approach employed since the Indian Reorganization Act. Ostensibly, Myer wanted to make individual Indians more responsible for their daily affairs and less dependent on the paternalistic workings of the BIA. Accomplishing this goal, however, required a sustained attack on tribal governments, since virtually none of the tribes wanted to

relinquish the rights and privileges that encompassed their trust relationship with the federal government. As a consequence, the Myer administration found itself in the paradoxical position of having to curtail Indian rights in order to "liberate" Indians.

Two policy decisions demonstrate how this odd arrangement took effect. In the fall of 1951, Myer issued a set of directives governing the hiring of tribal attorneys and regulating the activities of attorneys under contract. Indians and advocacy groups ranging from the Association on American Indian Affairs to the American Jewish Congress to the United Auto Workers vigorously denounced the new rules on the grounds that they violated the rights of Indian people to freely obtain counsel, and in January 1952 Secretary Chapman interceded to reverse Myer's directives. Nevertheless, Myer continued to meddle with tribal attorney contracts, to the effect that over forty tribes ultimately protested his interference. The significance of these actions was perhaps best summarized by Felix Cohen in his stinging indictment published in the *Yale Law Journal* in 1953: "For Indians, as for other underprivileged groups, denial of the right to independent counsel means undermining of all the rights which require independent counsel for enforcement."[13] Virtually all tribal rights associated with the trust relationship fit this category.

Myer moved to implement a second policy in 1952, when he announced the creation of a new layer of bureaucracy—"area directors" stationed around the country to decentralize the bureau's decision-making process. In theory, the area directors would be more responsive to the needs of Indians, since they would be in closer proximity to the reservations. In actual practice, however, they tended to remove responsibility from reservation superintendents, thereby reducing local control. As John Collier pointed out: "At the local agency level, the Indians may exert their political pressure directly. In Washington, the Indians may exert such pressure indirectly through their Congressmen. But there is no way in which the Indians may effectuate political decisions at the Area Office Level, other than by making numerous expensive trips, and with the knowledge that the final decision is in the central office at Washington. The Area Offices thus do take 'the administration of [BIA] programs farther away from the Indians.' "[14]

The cumulative effect of these and several other policy innova-

tions was a sharp increase in the power of the commissioner's office at the expense of Indian rights and prerogatives. But Myer *did* want the tribes to exert local control over their own affairs to the degree that they took over responsibilities formerly vested in the bureau. He referred to this approach as his tribal "liberation" program. He eventually discovered, however, that the tribes had no wish to be so liberated—at least in any fashion that included the abrogation of their treaty rights and federal trust status. Therein lay his difficulty, for despite the extensive authority of his office, Myer had no legislative authority; therefore he could not compel the Indian tribes to accept his termination proposals. By 1952 he resorted to *inviting* tribes to join in his initiative. That year Myer officially extended his offer in his annual report: "If any Indian tribe is convinced that the Bureau of Indian Affairs is a handicap to its advancement, I am willing to recommend to the Secretary of Interior that we cooperate in securing legislative authority to terminate the Department's trusteeship responsibility with respect to that tribe."[15]

The key words in this proposal were those inviting the tribes to "cooperate in securing legislative authority." Myer knew that he could not prevail without tribal consent, and since consent was not forthcoming, his initiatives generated more controversy than results. Moreover, Myer attracted such strong and determined opposition that he became a liability both to the growing bipartisan consensus over Indian affairs in general and to the Truman administration in particular. Determined to make a new start in the area of Indian affairs, the newly elected President Eisenhower asked for Myer's resignation in March 1953. Myer departed somewhat unceremoniously, declining to comment to the press for fear that he might "revive the bitternesses that have passed."[16]

While Myer generated controversy and bitterness, the real power behind the termination effort remained in the congressional subcommittees, particularly that of Senator Watkins. Myer could *invite* tribes to submit to termination, but Watkins had the *legislative* prerogative. As will be seen, he used this power to propose specific acts of termination legislation and guide them through the Senate. Allies in the BIA remained important to Watkins and he made good use of them, especially after the Myer's resignation. Associate Commissioner Lee remained in office and made certain that Wat-

kins received the bureau's cooperation.[17] Meanwhile, in the House, Representative Bosone continued her quest for a report from the BIA to determine which tribes were qualified to manage their own affairs. When Congress convened in January 1952, she promptly introduced a new version of her resolution, this time designated House Joint Resolution 8.

Like her earlier effort, Bosone's proposal had plenty of support. As she noted in the debate on the merits of the resolution, "Three years ago I was the first member of Congress to introduce a resolution to start the wheels turning to take the American Indian off wardship. Now, everybody seems to be trying to get into the act."[18] Not only were other House members proposing similar legislation, but several termination supporters outdid themselves in denouncing the past trend of Indian policy. Congressman O. K. Armstrong of Missouri declared, for example, that former commissioner John Collier's policy of enlarging reservations and encouraging tribal self-government had "virtually forced the Indians back into Indianhood." Furthermore, Armstrong declared the Wheeler-Howard Act, the capstone of Collier's New Deal legislation, to be "an absurd thing." He continued, "It should never have passed. Now Congress should move quickly to undo the disaster of the Wheeler-Howard Act that would indianize these Indians progressively and completely."[19]

As Representative Armstrong's comments made clear, the growing congressional sentiment held that Indians needed to be assimilated into the American mainstream as quickly and comprehensively as possible. Given the tenor of the times and the conservative composition of Congress, it is less than surprising that no one defended Indians' right to maintain their own cultural identities, or the right to be both Indian *and* a participating citizen. Few people understood the idea of a pluralistic society in those days—especially, it seems, members of Congress.

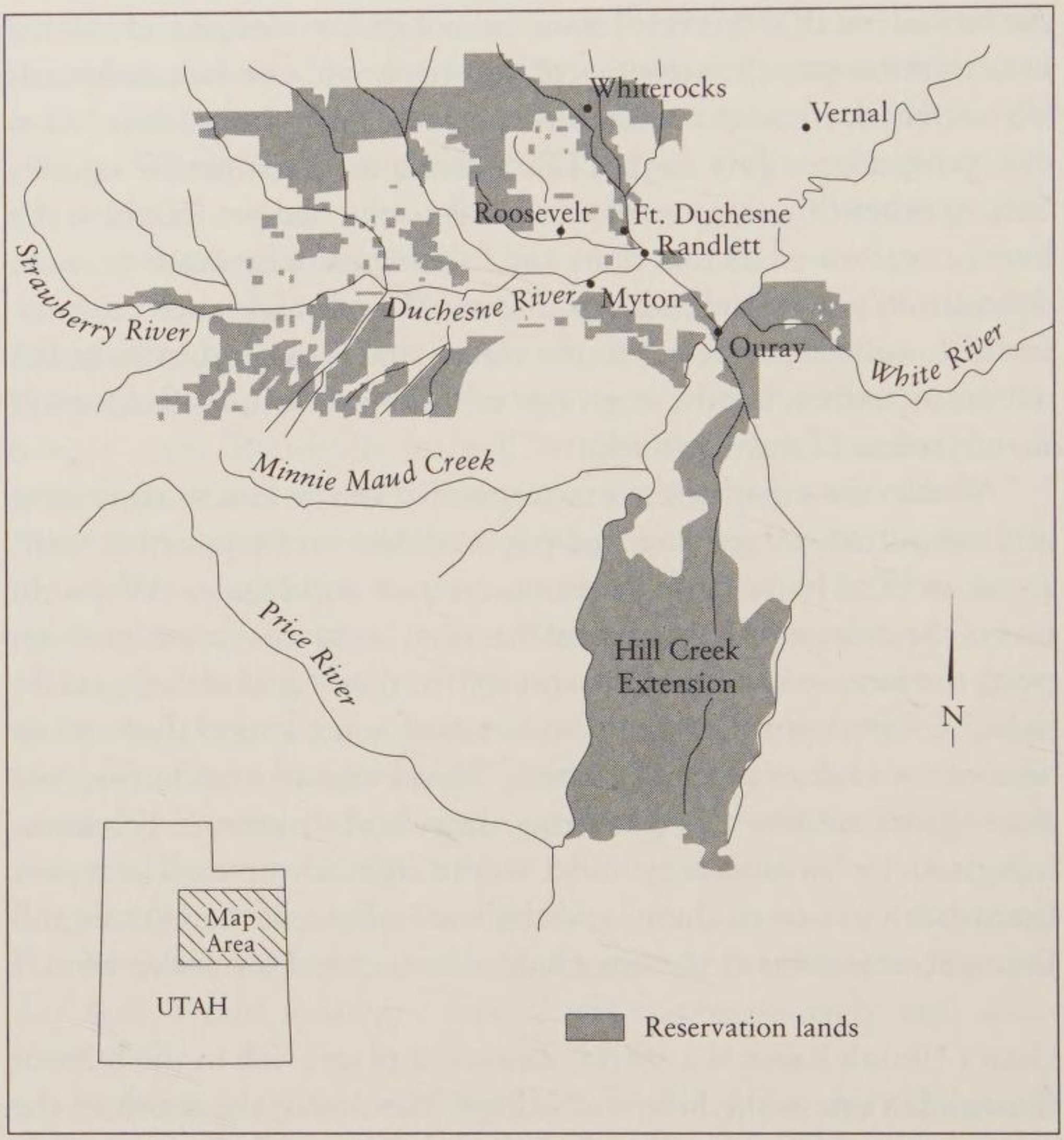
In the clamor to do something about Indian affairs and the "maladministration" of the BIA, the House of Representatives superseded Bosone's resolution with a more comprehensive measure. Her legislation called only for "a report on the condition among the various tribes, bands, and groups of Indians" so that Congress could "take appropriate action" later on.[20] But several members of

the House felt that this resolution did not go far enough and that an investigation into the activities of the BIA should also be conducted. Ultimately, both ideas were incorporated into House Resolution 698, passed on 1 July 1952. H.R. 698 required the BIA to submit, among other things, an explanation as to the manner in which the bureau performed its functions and fulfilled its obligations of trust; delineation of bureau functions that could be discontinued or transferred to other agencies or to the states; and most importantly, the names of "tribes, bands, or groups of Indians now qualified for full management of their own affairs."[21]

Within six months, the BIA responded to the House resolution and submitted sixteen hundred pages of data and supporting testimony to the House Committee on Interior and Insular Affairs. In one of the most significant bits of information in this voluminous report, the bureau informed the committee that it had already established a Division of Program and staffed it with specialists in the area of "withdrawal programming." Field agents were busily conducting inventories and gathering data, and "intensive programming activity" was already under way in eighteen states. The report listed Utah as one of them, and the Ute Indians of the Uintah and Ouray Reservation as the one Utah tribe targeted for withdrawal.[22]

Utah's Uintah Basin is a starkly beautiful place, rich in the hues of the reddish ore in the hills and valleys. Nestled to the south of the majestic Uinta Mountains with their vast pine and fir forests and alpine lakes, the basin provides a sharp contrast of aridity, rolling terrain, and sparse vegetation. The deep green colors of the high forests are almost entirely absent; in fact, the most prevalent shade is the pale green of the Russian olive trees planted in the early twentieth century by fish and game officials who sought cover for their transplanted pheasant populations. Today the Russian olive trees are ubiquitous along the meager waterways of the Duchesne and Whiterocks Rivers, Ashley Creek, and other tributaries of the Green. Together with the field grass and sagebrush, the olive trees provide a backdrop for the desert terrain.

The high elevation and limited rainfall combine against agricultural endeavors. The growing seasons are short, the water resources scarce. Economic development in the basin historically centered on



MAP 1. Uintah and Ouray Reservation and communities, circa 1950

cattle and sheep ranching, with mineral extraction as a secondary consideration. Early in the twentieth century, mining enterprises were directed at relatively mundane resources such as gilsonite and gypsum, but the subsequent discovery of oil and oil shale deposits redirected the economy toward energy development. In the early 1950s, when bureau specialists examined the physical assets of the Uintah and Ouray Reservation, they concluded that these resources were sufficiently abundant to allow the tribe to become self-supporting.

In fact, when the withdrawal specialists in the bureau presented their report on the Ute tribe in late 1952, they had a considerable amount of economic and sociological information to draw upon. Some aspects of the planning effort had been under way literally for years on the Uintah and Ouray Reservation, although most of it evolved in response to the needs of the tribe rather than the expectations of the bureau. The Utes even had their own Planning Division, headed by the tribe's coordinating officer, Francis McKinley. Most of the plans developed by the tribe originated as part of a Colorado judgment money expenditure program, while others, such as the tribe's land acquisition program, started decades earlier.

When dissident Utes later accused McKinley and his Planning Division of foisting a ready-made program on the tribe, he countered with the contention that "anyone who reviews this record must come to the conclusion that the land feature of the Ute Planning Board did not suddenly materialize. It is a product of years of planning, litigation, and controversy." He took the same approach in explaining the plans for education, noting that the federal government had been attempting to close the Uintah Indian School for years. All of these plans, he said, were designed to meet the ongoing needs of the Ute tribe.[23]

Tribal planning, however, differed from the rehabilitation programming envisioned by advocates of termination policy. On the Uintah and Ouray Reservation, "rehabilitation" or "withdrawal programming," as it was variously known, resulted from two important developments: the realization of the Colorado judgment money, which offered the Ute people the possibility of a greatly improved standard of living, and the direct application of pressure tactics by Senator Watkins and his temporary ally, Commissioner Myer.

The advent of new money from the claims case and energy resources led many tribal members to demand per capita payments as a way of alleviating the general poverty on the reservation. Two years earlier, in the summer of 1950, many of the Utes were so poor that they could not provide clothes for their children to wear to school. Conditions reached such extremes that Superintendent Stone had to request approval for a per capita payment of one hundred dollars for clothing purchases and other needs.[24] The meetings for planning this distribution were heavily attended. Stone noted in his request for assistance that the Utes knew they would receive money in the future—both from the Colorado judgment and from oil royalties. As he put it, "We are dealing with a group who are coming into material wealth, and it seems not only important for their present needs that they receive this money, but that they be allowed to use it in preparing for the use of the larger sums when such funds become available."[25] Thus he forecast the consolidation of "tribal planning" with "withdrawal programming," which occurred when policy makers realized that both approaches could be utilized in a scheme to distribute the judgment funds.

The critical juncture seems to have come in November 1950, when Tribal Business Committee members and the Planning Division staff met in Phoenix with Commissioner Myer and the area director's staff. McKinley described the outcome as follows: "The proposal we advanced was that the Utes needed money desperately and they were clamoring for relief. We realized that a mere request for a per capita payment would not meet the approval of the higher authorities and such a request would have to be accompanied by a permanent constructive plan to receive favorable action. The appropriation for the land program and education met the requirements. They were of emergency nature in that we had already had plans for them. Attention needed to be given them immediately." In other words, Myer and the "higher authorities" demanded a "permanent constructive plan" in exchange for "favorable action" in granting the Utes' request for emergency per capita funding. In Myer's vernacular, "permanent constructive plan" meant a long-range termination program.[26]

The Ute delegation had little choice but to agree to these terms

and push ahead in preparing the short-term emergency program. According to the provisions of the Ute Jurisdictional Act, any funds appropriated to the Utes from the judgment monies required the general approval of Congress, and of Senator Watkins's Subcommittee on Indian Affairs in particular. Thus McKinley's oblique reference to receiving approval from "higher authorities" undoubtedly referred to this reality. That Watkins was aware of these promises and very likely a party to them can be deduced from statements made by Watkins himself. Two years later, when resistance to the programming effort demanded his personal attention, Watkins wrote to Tribal Business Committee chairman Rex Curry and reminded him to perform "in good faith the promise which they [the Tribal Business Committee] undertook in 1950," namely, to formulate a long-range rehabilitation, or termination, program.[27]

Six months later, in May 1951, the Tribal Business Committee and McKinley's Planning Division completed the comprehensive, two-stage rehabilitation program for the tribe. That month a delegation that included both Curry and McKinley traveled to Washington to present the program to Watkins's subcommittee. It seems likely that Watkins exacted similar promises for a long-range termination program from the tribal leaders on this occasion as well, for he later referred to these "promises" in another of his letters to Curry. On 12 May 1953, Watkins warned Curry and the Business Committee to "keep certain promises" made by "certain administrators of the Ute Tribe to a committee of the Congress" to produce a long-range program that would result in the ultimate termination of the tribe.[28]

The Utes' ideas for spending their $18 million share of the court settlement envisioned two phases. The first, a three-year rehabilitation program aimed at forcing upward the low living standards on the reservation, was estimated to cost $5 million. The three-year plan was also intended to prove that the Utes could use their money wisely while working out a long-range program for spending the balance with a view to "assimilating the Ute Indian into the American culture and society."[29] The main provisions of the plan provided for an immediate, no-strings-attached $1,000 per capita payment to tribal members; a $1 million loan fund administered by the Tribal

Business Committee; a $1.25 million land reacquisition program; and $1.15 million going to schools, a fish and game program, and adult education.

The hearty welcome the Ute delegation received in Washington masked the fact that the development of the rehabilitation program over the past six months had created serious tensions within the tribe. As part of the process, the Tribal Business Committee and the Planning Division held a series of meetings at the reservation communities of Randlett and Whiterocks to educate and inform tribal members of their plans. The hope was, as McKinley put it, that "after receiving enlightenment, the Indians would be able to do some constructive and intelligent thinking on their various problems." However, he continued, "we received very little if any constructive thinking. The majority of the Indians seemed to be interested only in how much money they were to get and when."[30]

The money issue divided the tribe along the fault line that already ran between the mixed-bloods and the full-bloods. Both sides resented the planning proposed by the Tribal Business Committee and the bureau. At one of the meetings held by the planning groups, Rex Curry's sister, Elizabeth Bumgarner, strongly attacked the programming efforts of McKinley and the Business Committee.

Bumgarner emerged that winter as a formidable opponent to the tribal leadership. She helped to organize a group called the Ute Indian Affairs Organization to oppose the planning effort. Most of Bumgarner's supporters were mixed-bloods like herself who wanted a larger per capita payment. Officers of this new, dissident organization included a trio of mixed-blood Utes, with Bumgarner as president, Julius Murray as vice-president, and Lula Murdock as secretary. In one of their first acts of opposition, Bumgarner wrote to McKinley and threatened the Tribal Business Committee with a court injunction unless the tribe as a whole received the opportunity to vote on their rehabilitation plan. She reminded McKinley that "Mr. Wilkerson [*sic*] at the May meeting stated that the Tribal Committee, or Mr. Stone could not touch these [judgment] funds [and] that the plans and expenditures must come from the Indians."[31]

Bumgarner sent a copy of her threatening letter to tribal claims attorney Ernest Wilkinson, hoping for his powerful endorsement. Wilkinson, however, fully backed the planning effort. Just a few

weeks earlier he had received a similar letter from William C. ("Bill") Reed, an influential member of the mixed-blood opposition. Reed argued for a much larger per capita payment, preferably one of $5,000, but his main purpose was to inform Wilkinson of the formation of the Ute Indian Affairs Organization and to enlist his support. Reed also informed Wilkinson that "the Tribal Committee seem to favor a socialist or communist system for the Ute people, rather than an economy based upon individual or private enterprise"—a rather obvious attempt to play on Wilkinson's anti-Communist sentiments.[32]

In his reply to Reed, Wilkinson blandly outlined the procedures by which appropriations were made by Congress, making no mention of the new opposition group or its objectives. Without informing Reed, however, he also sent courtesy copies of his reply to Rex Curry and tribal attorney John Boyden—along, presumably, with copies of Reed's letter. Wilkinson made certain that the courtesy copy notation was typed directly onto the carbon copy and not the original—a standard business practice in legal offices known as sending a "blind carbon copy." In other words, Wilkinson kept Curry and Boyden informed of the opposition group's activities without telling Reed.[33]

The job of responding directly to the tribal opposition fell primarily on McKinley. As the planning officer for the tribe and a spokesman for the full-blooded members, McKinley favored using the funds for the benefit of the less acculturated members. Rather than expend the money on per capita payments, he knew that the most effective way to use the funds would be to create programs to elevate the tribe as a whole. To Bumgarner's accusations, McKinley responded with a point-by-point rebuttal. Among other things, he blamed the Utes' failure to gain a larger per capita payment on Bumgarner's own Ute Indian Affairs Organization. He reminded her that when the Uncompahgres approved the emergency plan they requested a $2,000 per capita payment, which the Whiteriver band also favored. But, as he explained to Bumgarner, "The group you represent more than any one else opposed the program, and as a result of your opposition, the Whiterocks group, representing the majority of the Uintah people, refused to endorse the plan. Their refusal to cooperate revived old quarrels about the Uintah band not

having any rights in the Colorado claims and the breed question cropped up, leading to rehashing of old controversies which were purportedly settled in the General Council of June 1950."[34]

With events thus stalled, a general meeting was called at Fort Duchesne on 11 February 1951. The Indians were given a choice of taking either $1,000 in unrestricted money or $2,000 with "the strong possibility of having restrictions placed" on how the money could be spent. The Utes voted 74–0 for the short-range program in land, education, and rehabilitation over a long-range program and then voted 96–6 in favor of an unrestricted $1,000 payment instead of a restricted $2,000.[35]

When the Ute tribal delegation finally arrived in Washington in May 1951, Senator Watkins and the members of his subcommittee received their three-year program warmly. Watkins quickly had the legislation drafted and then ushered it through Congress. He graciously facilitated these requests because he saw them as expedients to a larger goal: a long-range termination program for the Ute tribe. Watkins thought he had the Ute leadership's promise that a long-range program would be forthcoming. He did not fully appreciate that the terms "long-range" and "rehabilitation" meant different things to the divergent factions on the Uintah and Ouray Reservation.

After the three-year program went into effect as Public Law 120 on 21 August 1951, problems quickly emerged over what the plan was supposed to accomplish and which tribal factions would benefit the most from it. The plan itself offered something for almost everyone, including, most fundamentally, a per capita payment authorized by the secretary of the interior. In October 1951, every enrolled member of the Ute tribe received $1,000 in the form of an Individual Indian Money account, subject to withdrawal upon the submission of a brief plan explaining how the funds would be used. The tribe offered very few restrictions on the withdrawals in the expectation that members would need the experience gained in handling large sums. According to Superintendent Stone, most of the Utes used the money to buy food and clothing and to pay old debts. He noted in his report to the bureau that almost every family bought an automobile or a truck, exercising "reasonably good judgment" in purchas-

ing these vehicles, but he added that there were also a "number of stupid transactions, both in the care that they have taken of their automotive equipment and the tendency to spread out in this direction far beyond their need."[36]

The per capita program continued out of tribal funds over the duration of the three-year program. In 1952 each member of the tribe (approximately 1,750 individuals) received an additional $1,375, and in 1953, another $1,325.[37] By the end of the three-year period, payments from U.S. Treasury and local funds totaled $4,135 per member, much of it derived from oil and gas leasing revenues.[38] From the perspective of the Tribal Business Committee, however, per capita payments constituted only one aspect of a comprehensive plan for rehabilitating members and strengthening the tribe's economic base. Additional features of the plan included a land program designed to add new land to the reservation and provide more grazing property. Within the first six months the tribe purchased over fifty-five hundred acres and contemplated the purchase of many more. In addition, the three-year program provided for the survey of the range-carrying capacity on tribal grazing lands and for improvements on existing rangelands through the construction of fences, stock ponds, and other useful projects. Other provisions of the program helped the members in a more personal way. A revolving credit fund of $1 million was established to provide loans to individual members, complete with a rather conservative Tribal Credit Committee. A housing rehabilitation program helped to remodel or build more than one hundred homes, with much of the lumber coming from the tribal forestry reserves. The program also made arrangements to close the Uintah day and boarding school at Whiterocks and to transfer the Ute children to public schools in the Uintah Basin. A Reservation School Board was established to assist in this process and to act as a liaison with the local school boards.[39]

The Ute Planning Division intended that the various provisions of the three-year program would further the development of the tribe as a whole and foster the "rehabilitation" of individual members. But all of these provisions—range enhancements, housing and credit programs, and involvement in the public schools—presupposed a degree of experience in business, banking, and education. The assimilationist objectives of the program, therefore, made it

inevitable that the most acculturated tribal members would be in a position to receive the greatest benefit. The per capita payment program formed the only exception to this general pattern, and government officials observed that the Utes took less interest in their farms and ranches and off-reservation employment opportunities as a result of the tribal income.[40]

Not too surprisingly, tribal divisions widened between the more acculturated mixed-blood members and the full-bloods, especially as the mixed-bloods aggressively took advantage of the program's various provisions. For example, during the three years the program was in effect the average loan made under the credit program was $6,032.04 to the mixed-bloods but only $3,279.81 to the full-bloods. The majority of self-supporting households on the reservation were those of mixed-bloods. According to the reports submitted by bureau personnel, the mixed-bloods made "substantial progress" over the course of the program, while the full-blood Utes demonstrated "no comparative improvement." The evidence suggests, in fact, that the full-bloods lost considerable ground in the late stages of the three-year program. In March 1954, to cite one rather telling statistic, eighteen cars were repossessed from full-bloods. Merchants in surrounding towns had to take steps to collect on exorbitant grocery accounts. One case resulted in a civil suit filed against a full-blood family for refusing to pay a $2,200 grocery bill.[41]

Sentiment among the full-bloods held that the tribal leadership, particularly the members of the Tribal Business Committee and the Planning Division, had fallen under the control of the mixed-blood faction. According to their argument, these leaders claimed to represent the whole tribe, but because they were more acculturated, better educated, and enjoyed a higher standard of living, they "lacked the perspective and appreciation of the peculiar problems of the full-blood people."[42] Bureau personnel tended to support this assessment. Robert L. Bennett, a BIA programming officer who visited the reservation several times in 1953 and 1954, stated that the Uintah Agency staff members spent 80 to 90 percent of their time working with the mixed-bloods. This was primarily so, he concluded, because the full-blood Utes did not know enough about the available services to take advantage of them.[43]

The accusations of the full-blood Utes rang true, especially

those aimed at the Tribal Business Committee and its thirty-five-year-old chairman and business manager, Rex Curry. No one personified the divisions within the tribe better than he. His mother descended from the mixed-blood Uintahs and his father from the full-blood Uncompahgres, yet Curry charted his own course. It is said that as a young man he set out to disprove the Mormon Church and ended up converting to it. He left the reservation to attend Brigham Young University, and returned after graduation and military service he returned to work for the BIA. Largely assimilated to the dominant culture himself, Curry represented the interests of the more acculturated elements of the tribe. He married a white woman and settled in Roosevelt, for the most part raising his children outside of Ute cultural traditions.[44] Eventually he became a Mormon bishop (the leader of a local Roosevelt congregation). Needless to say, his religious and ideological background provided for a close working relationship with attorneys John Boyden and Ernest Wilkinson and, as events soon demonstrated, contributed to his cooperative attitude toward Senator Watkins's legislative agenda. Curry shared many things in common with these men, most importantly the stereotypical Mormon perception of Indians as a troubled people who needed help and understanding to overcome their "problems."

A speech Curry delivered for the Uintah Basin Indian Day celebration in August 1949 illustrates his point of view. After carefully reviewing the course of Ute history since the arrival of the whites, he argued that few people understood the problems his people faced or the contributions they had made. Yet he defined progress for Indians only in terms of economic development and rapprochement with the local population. He concluded by offering his sincere wish that, regardless of the direction future events might take, the local residents would "meet the Indian, give him sympathetic understanding and to help him meet his problems, let him know that you appreciate what he has done for the Basin."[45]

Curry could afford to be ambiguous about the future direction of tribal affairs on that occasion, for in the late summer of 1949 the Colorado judgment had not yet been rendered, nor had promises been extended to Senator Watkins and Commissioner Myer. Following congressional approval of the three-year program, however, Curry became more direct in his pronouncements, especially to

those in a position to assist tribal development. He wrote to Congresswoman Bosone, for example, thanking her for supporting the legislation, and then promised that the Utes would make "wise use of our money to the end that our Indians will be able to help themselves and become contributing members of our American Society."[46]

Exactly how the Indians could be counted on to "help themselves" remained to be determined, but one thing was certain: Curry possessed enough authority within the tribal leadership to decisively affect the direction of tribal affairs. As previously noted, he served the tribe both as chairman of the Tribal Business Committee and as the tribal business manager, an arrangement that concerned bureau personnel. As Robert Bennett noted, Curry basically ran "all phases of tribal activity," and what he "didn't do as Business Manager, he did as Chairman." As a consequence, Curry lacked any "checks or balances on his authority." Nevertheless, bureau officials like Bennett contented themselves with the knowledge that Curry invariably took the advice of tribal attorney John Boyden, a man they trusted thoroughly.[47]

Despite his dual position within the tribal government, Curry shared de facto leadership responsibility with Francis McKinley, the planning officer. The Tribal Business Committee hired the thirty-year-old McKinley in July 1950 to conduct research and develop a rehabilitation program for the tribe utilizing the Colorado judgment funds. Prior to accepting the position, McKinley received a bachelor's degree from George Washington University and had taken graduate courses while working for the Treasury Department. Thus he and Curry shared the distinction of being the only college graduates on the reservation. In those earlier years the two worked closely in developing the three-year program, but as the program matured, tribal members came to identify Curry as the spokesman for the mixed-blood Uintahs and McKinley as the spokesman for the full-blood Uncompahgres.[48] While neither characterization was completely accurate, the situation produced some friction between the two. By the summer of 1953, as plans for a long-range rehabilitation program began to evolve, the disagreements between Curry and McKinley became more pronounced and McKinley made arrangements to leave his position and take a similar one with the Ute

Mountain Utes of southwestern Colorado.[49] To head off this potentially disastrous loss to the programming effort, the Tribal Business Committee offered to increase McKinley's salary and enlarge his responsibilities. He accepted and remained with the tribe as the "director of housing and community programs." Meanwhile, to placate the other half of the dual leadership, Curry also received a salary increase.[50]

The most profound difference between Curry and McKinley concerned the overall direction of the programming effort. Although Curry distrusted the motives of some of the more rabid termination advocates, especially those who wanted to open reservation land to developers, he generally followed the lead of his legal and legislative advisers Boyden, Wilkinson, and Watkins. McKinley, on the other hand, was philosophically more attuned to the guidance of Superintendent Stone, and far more outspoken in his opposition to termination.

The first signs of disagreement emerged in April 1952, when Senator Watkins introduced legislation in Congress to withdraw federal supervision over the Indians of the Grande Ronde, Oregon, and Silletz, California, agencies. The legislation proposed to terminate some twenty-one hundred Indians, approximately eight hundred of whom lacked any tribal affiliation. Watkins made a point of explaining to members of the press that he had been "urging such legislation for several years" and that following the Oregon and California Indians, the next tribe to be "guided toward first class U.S. citizenship" would be the "Utes of Utah and Colorado."[51] Watkins's schedule certainly came as news to the tribal leadership at Uintah and Ouray. McKinley reacted with anger and issued a press release of his own, stating, "We have never advocated legislation to terminate federal responsibility toward the Ute Indians of Utah and will oppose any such measures until we are satisfied that the Utes are prepared and willing to assume the responsibilities of citizenship. . . . Senator Watkins, among other congressional leaders, believes that the 'cure-all' to the perplexing Indian problems can be solved by legislation, but we disagree and would prefer to meet the problem by education, orientation, experience and through cooperative relationships between the tribal, county, state, and federal governments in working out our mutual problems." In his position as

chairman of the Tribal Business Committee, Curry issued the press release over his own name, but he attributed the statement entirely to McKinley. Curry offered no comments of his own on the subject, perhaps remembering the "promises" made to Watkins and his subcommittee. But McKinley, once again, took the opposite approach, warning that the objectives of the long-range program would be determined by the "democratic action of the Ute people." He concluded by reminding the senator that the Utes could "think and act for themselves."[52]

McKinley's outburst seems to have taken the tribal attorneys by surprise, as did the statement by Watkins that provoked it. At the Wilkinson law firm a flurry of letters followed as Glen Wilkinson and John Boyden tried to determine what, exactly, the senator had said and to whom he had said it. Ernest Wilkinson finally settled the issue by pointing the others to Watkins's press release published in the *Salt Lake Tribune*. Apparently, the lawyers concluded, Watkins had merely offered his opinion that the Utes would be next in line for termination and had not issued any formal announcement to that effect.[53]

Shortly after McKinley's public warning to Senator Watkins and others who would terminate the Utes, Superintendent Stone issued a private warning of his own. Writing directly to Associate Commissioner Lee, Stone complained that he could not help but "lean very much to McKinley's viewpoint" and urged that the bureau support the tribe's efforts to develop its own plans. He warned that Watkins's statements had the potential to "undo" all that had been accomplished by creating the impression among the members of the tribe that the tribal leaders and Watkins "were working together."[54] For the enlightenment of his superiors, Stone included with his letter an editorial from the *Salt Lake Tribune* that argued, among other things, that termination programs "must be oriented and gradual, for to remove the 'ward' status without preparing the red men for more responsibility and authority, where needed, would be chaotic."[55] Whether the superintendent knew of the cooperative relationship between Watkins and Lee is unclear, but his letter certainly made the rounds of the bureau hierarchy. Most of the senior officials read and initialed it, including Commissioner Myer.

Not all BIA officials were in agreement with Stone's assessment

of the situation on the reservation. Myer's appointees in the BIA Division of Program, for example, had for some time been preparing to implement a long-range rehabilitation program of the Utes as soon as the tribal leadership could be induced to create one. Myer's office had also been seeking ways to reduce bureau services on the Uintah and Ouray Reservation. The most significant example of this tendency involved a proposed change in the Ute Corporate Charter, allowing the tribe to open an account with a commercial bank to deposit funds and providing for the elimination of Individual Indian Money accounts with the BIA. Following the bureau's lead, the tribal leadership convened a General Council meeting and submitted an amendment to that effect. The Utes passed the measure, but their version displeased Myer because it contained a provision allowing tribal corporate funds to be deposited with a disbursing officer of the United States.[56] Naturally, this ran counter to Myer's intended objective of eliminating as many bureau functions as possible from tribal operations. After thinking the situation over, however, Myer decided that the provision might prove useful to the government, so he proposed that the amendment be changed to allow the use of a disbursing officer—but only at the direction of the secretary of the interior.[57]

Myer's proposals and counterproposals to amend the Ute Corporate Charter produced a good deal of confusion and anxiety for the tribal leaders, but they actually accomplished very little. Ultimately the commissioner's suggestions induced Boyden and Curry to travel to Washington to settle the matter. In a meeting with the commissioner, Boyden argued that the proposed changes were "unnecessarily restrictive" and would require a special referendum of the tribe to enact.[58] Myer finally agreed to accept their "interpretation" and allow the tribe to pursue its own method of depositing tribal funds, but in typical fashion he warned that by August 1954—the end of the tribe's three-year program—all such funds would have to be transferred to a commercial bank.[59] In a fitting end to this saga, the tribe went ahead and held a special referendum to change the corporate charter; even though the measure passed overwhelmingly, the vote was invalidated because an insufficient number of voters participated. Apparently, most of the Utes either did not understand the issue or did not care enough about it to vote.[60]

As events transpired, failure to change the corporate charter hardly mattered. By the spring of 1953, Myer's tenure as commissioner had come to an end. President Eisenhower asked him to resign in May, leaving W. Barton Greenwood in place as acting commissioner until the appointment of Glenn L. Emmons in late July. The period surrounding Myer's departure, meanwhile, proved to be critical for the Ute people, for it was at this moment that Senator Watkins decided to step up his pressure on the tribal leadership to produce a termination proposal.

The uncertainty surrounding the commissioner's office may have motivated Watkins to act while he had the opportunity, given the possibility that a newly appointed commissioner might oppose termination legislation. During the preceding fall campaign, Eisenhower had promised not to appoint a new commissioner without first consulting the Indian people, and once in office he proved as good as his word. Eisenhower dispatched Assistant Secretary of the Interior Orme Lewis to discuss the pending appointment with 150 different tribes.

In the meantime, Watkins began applying pressure on the Utes to produce their "long-range rehabilitation" plan. Despite the apparent successes of the three-year program, disagreements between the mixed-blood and full-blood factions hopelessly stalled efforts to plot out the tribe's future course. The mixed-blood group initially generated most of the opposition, boycotting the "adult education" planning meetings sponsored by the Tribal Business Committee and encouraging others not to attend. The full-blood Utes also objected to the planning, both out of resentment of the mixed-blood agitators and out of a growing sentiment that the programming effort failed to meet their needs. Rex Curry sadly reported to Robert Bennett that the situation on the reservation was "very confused" and that the tribe had been unable to make any "headway toward a beneficial program."[61]

Ironically, on 12 May 1953, the same day that Curry informed Bennett of the conditions on the reservation, Bennett, accompanied by Associate Commissioner Lee, visited the office of Senator Watkins to discuss the same situation. Bennett was preparing to visit the reservation in an attempt to suppress the opposition to the planning effort, and Watkins assisted by writing a letter for him to deliver to

Curry and the Tribal Business Committee. The letter came directly to the point: in response to the dissension and opposition on the reservation, the senator warned Curry and the Utes that "the Congress will expect you to keep very fully and completely your promises made to the Committee when this legislation [the three-year program] was approved." Then, addressing Curry, he added, "This applies not only to you and those representing the Ute tribes, but also the entire membership."[62]

Bennett arrived at Fort Duchesne on 19 May 1953 and hand-delivered Watkins's warning. He and other BIA officials (most notably H. Rex Lee) had already decided to intervene in the tribe's affairs, because, as Bennett noted in his official report, "the Bureau could not place the entire responsibility on the tribal leadership to attain what in the main are Bureau objectives."[63] In other words, Watkins, Lee, and Bennett could no longer wait for the tribe to do their bidding. Efforts had to be made to resolve the crisis and get on with the planning effort. To McKinley and the Ute Planning Division, however, this interference from the BIA on behalf of a U.S. senator amounted to nothing less than economic blackmail. The Utes were in desperate need of the funding, but many intuitively distrusted the new termination policy. Few understood it, and unsettling rumors swept the reservation.[64]

Resolving the divisions within the tribe and developing a long-range plan satisfactory to most tribal members consumed the remainder of 1953 and much of 1954. Senator Watkins observed all of this with growing impatience, and in February 1954 he finally delivered his ultimatum. In yet another letter to Curry, he explained exactly what type of program he would accept and then stated that "further legislation for aid or assistance to the Utah Tribe [would] greatly depend upon the activities of the Tribe in performing in good faith the promise which they undertook in 1950, namely to formulate the report and plan" (i.e., a seven-year termination program). As if to underscore the gravity of his threat, Watkins informed Curry that he expected the "final phase" of the Ute program to be tendered within ninety days, adding that all of the essential elements could be easily found in other termination bills currently before Congress. He even advised that if the tribe needed assistance in drafting the legislation, he would be happy to provide it.[65]

Watkins also specifically instructed Curry and other tribal leaders to ignore Indian rights advocates from the National Congress of American Indians and the Association on American Indian Affairs.[66] It is hard to imagine that Curry could have been much surprised by this ultimatum. As a close collaborator with attorneys Boyden and Wilkinson in tribal affairs, Curry was well enough acquainted with Watkins's objectives—and in certain ways even sympathetic to them. But McKinley and other tribal leaders, particularly those associated with the Uncompahgre and White River full-bloods, were stunned by this sweeping declaration of the senator's intentions. They feared that the senator intended to use the better-educated and more acculturated mixed-blood Uintahs to demonstrate that the Utes were prepared for termination legislation, and to thus "prematurely and unwittingly thrust the full-blood Utes into a way of life for which they were not prepared."[67]

4 UTAH PAIUTES AS WATKINS'S EXAMPLES

Despite Senator Watkins's optimistic prediction, the dissension and turmoil on the Uintah and Ouray Reservation prevented the Utes from becoming the next tribe "emancipated" by termination policy. Yet Watkins still wanted the tribes in his home state to serve as a model for Indians in other parts of the country.[1] Initially he sought to terminate all of the Utah Indian tribes, and in disregard for the diverse needs and conditions of the Paiute, Goshute, Shoshone, and Ute people living in Utah, the BIA drafted legislation to accomplish his objective.[2] By the end of 1953, however, the Utes still had not resolved their differences, and it became clear that Watkins would have to find other Utah Indians to serve as his examples.

The senator felt that he had to move quickly, as the fall and winter of 1953–54 proved to be a propitious season for termination action. Over the course of the preceding summer, Congress had passed House Concurrent Resolution 108 with remarkably little debate for such far-reaching legislation. Introduced in the House by William H. Harrison of Wyoming and in the Senate by Henry M. Jackson of Washington, the resolution stated the intent of Congress to make the Indians "as rapidly as possible . . . subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, and to end their status as wards of the United States." The resolution went on to list tribes of

Indians presumed ready for termination, including groups within the states of California, Florida, New York, and Texas, as well as other specific tribes such as the Flathead tribe of Montana, the Klamaths of Oregon, and the Menominees of Wisconsin.[3] Notably, the resolution made no mention of Utah tribes, an omission Senator Watkins intended to correct at the first opportunity. In the meantime, to take advantage of the prevailing congressional sentiment, Watkins's Subcommittee on Indian Affairs released a schedule for termination hearings (to be conducted jointly with the House subcommittee) to be held February and March 1954. Despite the omission of Utah Indians in House Concurrent Resolution 108, Watkins's committee schedule listed them as the first to be considered, and for one day of hearings only.[4]

Given that the Ute Indians needed more time to resolve their differences, Watkins shifted the focus of his termination legislation to the other bands of Utah Indians. Initially he included four small bands of Southern Paiutes living in central and southern Utah, the Skull Valley band of Shoshones (or Goshutes) in western Utah, and the Washakie band of Northwestern Shoshones living in Box Elder County of northern Utah. The two Shoshone bands effectively secured legal representation, however, and were eventually dropped from consideration, but not until well after the Paiute termination hearings.[5] In fact, the bill passed by the Senate *included* the two Shoshone bands, but the House subcommittee amended the legislation to remove them. The official reason given in the conference report stated that the Skull Valley and Washakie bands had only "intermittent" contact with bureau employees and that consultation had proven difficult to achieve. The House members therefore questioned whether the Shoshones even understood the purpose of the legislation.[6] Unfortunately for the Southern Paiutes, Watkins had consulted with them personally and vouched for their preparedness. Lacking the legal resources of their Shoshone neighbors, the four Paiute bands thus became the senator's Utah examples.

Actually, five bands of Southern Paiutes existed in Utah, none of which remotely met the established government criteria for termination. House Joint Resolution 698, passed in July 1952, called for an examination into the conduct of Indian affairs and a list of tribes deemed to be sufficiently prepared for termination, but it succeeded

TABLE 1: *Data compiled for the 15 February 1954 termination hearing*

Indian group	Total full-blood members	Total families	Families identified as self-supporting	Families identified as receiving assistance
Shivwits band	97	24	0	24
Koosharem band	27	9	2	7
Indian Peaks band	26	6	2	4
Kanosh band	27	6	2	4
Skull Valley band	39	12	4	8
Washakie band	119	41	32	9

Source: Joint Hearing Report on S. 2670 and H.R. 7674.

only in laying the groundwork for such a determination. In the meantime, Congress and the BIA still relied on the criteria prepared by Assistant Commissioner William Zimmerman in the testimony he presented at the 1947 Civil Service Committee hearings. According to Zimmerman, tribes subject to termination were supposed to have attained a significant degree of acculturation, to possess the economic resources to be self-supporting, and to be willing to accept the withdrawal of government services.

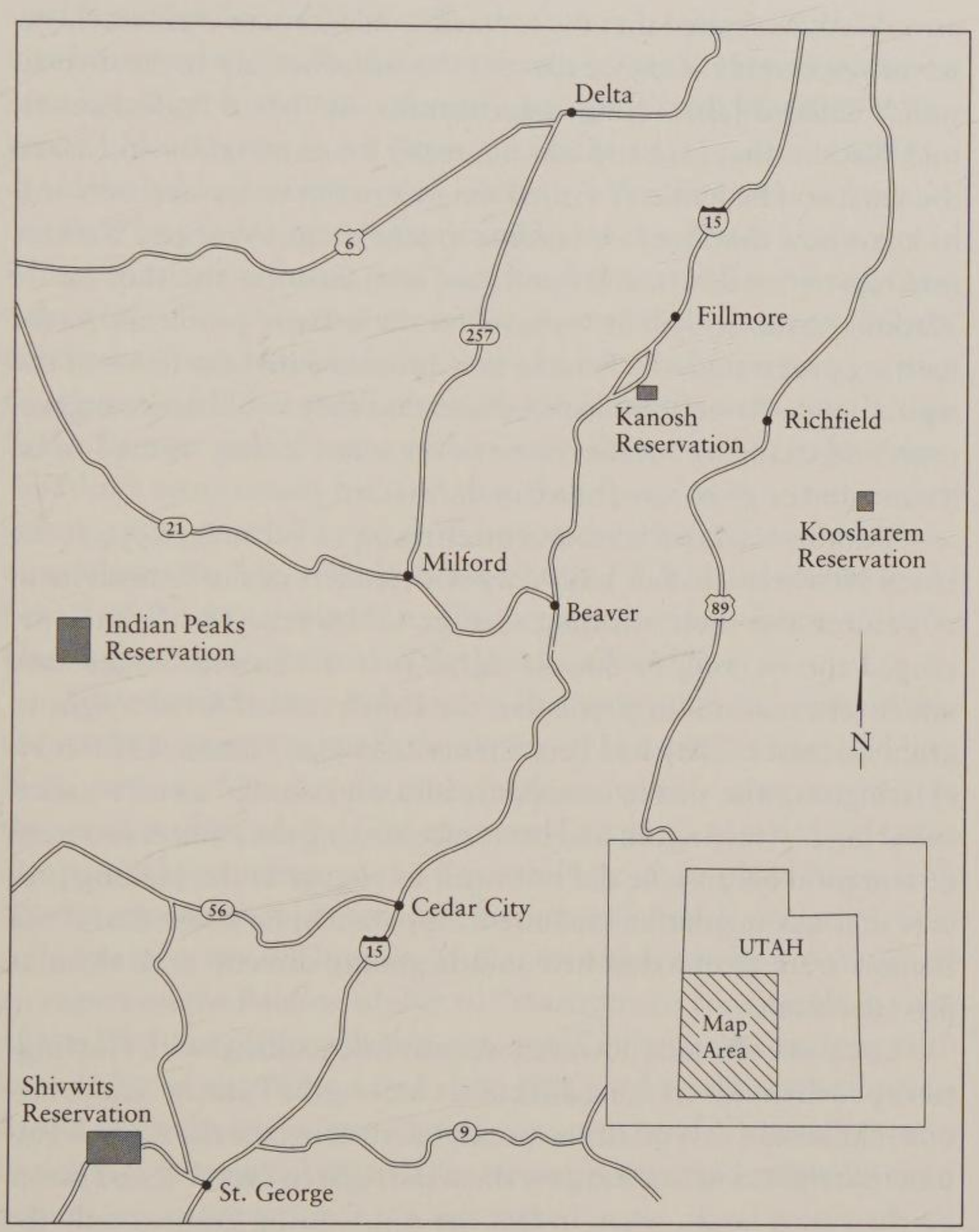
House Joint Resolution 698 mandated that the BIA thoroughly survey the tribes to determine their degree of readiness, and Commissioner Myer's administration subsequently developed an extensive questionnaire for bureau officials to use in evaluating each tribe.[7] Consequently, in the late summer of 1952 reservation superintendents and staff members around the country compiled data and submitted the required documents to Washington. The resulting reports, called "Summary Status of Withdrawal Status," reflected the judgment of the local BIA personnel. An examination of the documents submitted for the Paiute bands reveals that the BIA did not consider them ready for termination and did not contemplate any negotiations for withdrawal status. In fact, government officials noted that the Paiutes had made very little progress toward self-sufficiency. The report filed for the Indian Peaks band, for example, noted that no member of the band had "ever engaged in a successful business enterprise" and concluded that the members were "not competent to manage their own affairs."[8] The reports went on

to point out that the Koosharem Indians were supported almost totally by welfare, with only two of nine families receiving any benefit from tribal resources.[9] The Shivwits and Kanosh bands endured similar conditions, with four of the six families partially supported by welfare.

Ironically, the band of Southern Paiutes not considered for termination, the Cedar band, was the one with which Watkins was most familiar. These Indians had been living in a shanty village on the outskirts of Cedar City but had come under the paternalistic care of the local Mormon Church leaders. Watkins knew of the situation because the ecclesiastical leader of the church in Cedar City, William Palmer, had written him a detailed history of these Indians in 1946. Watkins apparently did not wish to interfere with the efforts of the church, and he dropped the Cedar Paiutes from consideration.[10]

After some preparatory work by BIA officials, Watkins scheduled a meeting for 30 December 1953 at Fillmore, Utah, with the four remaining Paiute bands. Since these Indians lacked representation and were generally disorganized, Watkins presided over the meeting, apparently feeling that he could present the legislation to them himself. His staff had already prepared a termination bill for the Paiute bands, and the senator used this occasion to present it to them. According to Norman Holmes, acting superintendent of the Uintah and Ouray Reservation, who attended the meeting and filed a brief report to his superiors, Watkins had the bill read to the assembled Indians; then he told them that the bill would release them from government control and that the time had come to see how many of them could "take over their own affairs."[11] After thus extending the prospect of federal abandonment, Watkins turned to his best argument. He explained that local and state officials had much to offer the Paiutes in terms of social work and public health care, but so long as they remained wards of the government, local officials could do nothing for them.

Most of those in attendance apparently did not grasp the full meaning of the senator's message or were too cowed to ask questions. A few Indians did speak out against the proposal, however. Arthur Johnson (a Goshute) argued against termination and pointed to the discrimination that local Indians experienced in the



MAP 2. Location of the terminated Paiute bands

area. Watkins replied that the Indians would have to conduct themselves respectably if they expected the white society to treat them well.[12] Clifford Jake, acting as speaker for the Indian Peaks Paiutes, told Watkins that his band was not ready for termination and asked the senator if he had ever visited the Indians on the reservation or if he knew how they lived. According to Jake's reminiscences, Watkins told him to "sit down, and mind [his] own business and shut-up."[13] Watkins obviously had little regard for the Indians' problems. As the meeting progressed, the Paiutes were informed that the terms of the legislation had not been finalized and that they could make suggestions and changes, but they were never asked if they wanted to be terminated or given any choice in the matter.

Watkins attended a second meeting on 10 February 1954 at the Hotel Newhouse in Salt Lake City with leaders of the Kanosh band of Paiutes and their attorney, George C. Morris. The senator arranged the meeting to discuss rights that the Paiutes might have under termination. In particular, the Paiutes asked for the right to grant oil leases. They had been influenced by an oilman, Charles H. Harrington, who was in attendance and who wanted an oil lease on tribal lands. Harrington had been encouraging the Paiutes to accept termination because he did not want to engage in the bidding process that BIA regulations required. Apparently, he knew that if the Indians were terminated he could negotiate directly with them as private citizens.

Local BIA officials, however, were well acquainted with Harrington's penchant for creating difficulties among the Paiutes. The previous year he had several times attempted to convince the Kaibab Paiutes that their constitution gave them the right to "vote" for oil leases on their own lands, when in fact the constitution granted only the right to "veto" oil leases.[14] Frustrated in this attempt, Harrington turned instead to the Kanosh band, first interfering with negotiations between the Indians and the state of Utah over a ditch right-of-way in an effort to ingratiate himself with tribal leaders, then pressuring them to accept oil leases on tribal land.[15] In every case, bureau employees pointed Harrington to the proper procedures for obtaining oil leases, but he preferred to pursue his own course of action.

Senator Watkins knew about the economic coercion Harrington was applying to the Kanosh Paiutes but was untroubled by it, de-

spite warnings from bureau officials. In fact, at the Paiute termination hearings held in Washington shortly after the Hotel Newhouse meeting, Uintah and Ouray superintendent Harry W. Gilmore described Harrington as an "enemy" of the bureau who sought to avoid the bidding process on oil leases. But Watkins deflected the accusation by producing a rather remarkable letter from Harrington, which, Watkins asserted, had been mailed from Fillmore only *two days* earlier. The oil executive had written to the senator to confirm that he had been in attendance at the Hotel Newhouse meeting and to acknowledge that the Kanosh, Koosharem, Shivwits, and Indian Peaks Paiutes were "more enthusiastic than ever" in supporting Watkins's termination bill and that they "wanted out from under government control." Instead of denouncing Harrington for his unscrupulous activities, Watkins used him as a favorable witness on behalf of Paiute termination. The senator went so far as to have Harrington's letter printed in the hearing record.[16]

A few months later Harrington had the opportunity to use the senator's testimony in much the same way the senator had used his. In the course of his dispute with the BIA, the oil executive retained the services of Salt Lake City attorney George C. Morris (the same attorney who represented the Kanosh Paiutes) to plead his case.[17] Morris wrote several letters on Harrington's behalf, including one to Interior Secretary Douglas McKay in which he cited Watkins as an expert on the Paiutes' ability to "manage and conduct their own affairs."[18] Since neither Harrington nor Watkins possessed any real knowledge of the Paiutes and their supposed readiness, and since Paiute representatives later denied any support of Watkins's termination bill, it seems likely that the two men arranged mutually supporting testimony prior to the hearings.

As previously mentioned, following the meeting with the leaders of the Kanosh Paiutes at the Hotel Newhouse, Watkins returned to Washington to chair the Paiute termination hearings scheduled for 15 February. Although the session was the first of several scheduled, committee members concerned themselves less with the necessity of establishing the proper precedents than with the desire to conduct the hearings as quickly as possible. After welcoming his committee counterpart in the House, E. Y. Berry of South Dakota, Watkins told the assembled gathering that the hearings would be

conducted jointly by both committees. As he explained the situation, "We have not gone into the legalities of it but the evidence will be considered by both Houses and the committees of both Houses. I think it will avoid the necessity of having two sets of hearings and two sets of records."[19] By circumventing the usual bicameral system of checks and balances, Watkins demonstrated that he cared more about expediency than the rights and needs of the Paiutes.

Chairman Watkins called Assistant Secretary of the Interior Orme Lewis as the first witness to appear before the joint committee. Lewis pointed out that the Paiute bill had been drawn up in response to House Concurrent Resolution 108 and that it followed a formula drafted by the bureau. The most important provisions, according to the assistant secretary, were those calling for consent on the part of the Indians and the stipulation that the Indians actually be ready for the adoption of such measures. Otherwise, he noted, the bills could be customized to fit the individual tribes as a result of the hearing process.[20]

As events transpired, Lewis had good reason for his concern about the consent issue. A few Indian defense organizations and private individuals had already taken an interest in the hearings, not only because they opposed termination, but in particular because they doubted that Watkins and his colleagues would respect this all-important provision.[21] Prior to the hearings, Alexander Lesser, the executive director of the Association on American Indian Affairs, wrote to attorney John Boyden and asked if the "Indian Peaks Band or any of these Utah groups" had any input in the pending legislation. "Our interest," he informed Boyden, the legal counsel for the Paiutes in the termination process, "is that we hope due weight will be given to the views of the Indians themselves."[22]

Lesser had also written Glen Wilkinson at the Wilkinson, Cragun and Barker law firm and asked if he knew the views of the Utah Paiute bands. Wilkinson replied that he did not know how the Paiutes felt about the legislation, but he promised to contact Boyden and find out.[23] Confronted on both sides, Boyden felt unprepared for the sudden scrutiny. In his response to Wilkinson he confided,

> On Monday I went to the Ute Reservation, where I talked with Superintendent Gilmore about the withdrawal bill. As you know,

Superintendent Gilmore is also superintendent over the scattered Paiute bands. We were unable to arrange a meeting with the Indian Peaks group prior to February 15, the day of the hearing, because Superintendent Gilmore was required to leave on Tuesday for Washington. Some of the Indian people were in my office today and I have agreed to call a meeting with the Indian Peaks group at Cedar City immediately upon Mr. Gilmore's return. I have sent a letter containing this information to Senator Watkins, a copy of which is enclosed for your information. Prior to this meeting, I do not believe anyone can say exactly what will be the stand of the Indian Peaks group. I am not acquainted with the views taken by the other groups.[24]

Aside from the 30 December meeting held with some of the Indian Peaks members by Watkins himself, no one had talked with them before the termination hearings. Even their attorney (Boyden) professed not to know their views! Watkins knew full well that the Paiutes had not made any decision—or even been consulted—because Boyden had already informed the senator of his inability to meet with them before the hearings. Naively assuming that this fact might matter to Watkins, Boyden wrote to the senator and suggested, "If there is no further hearing in the Senate, perhaps we can submit our opinions in writing to you, or, in the event the bill has passed the Senate, we will then take the matter up with the House when its hearing is held, provided, of course, that we care to make any suggestions."[25]

Boyden failed to realize that Watkins had arranged for the session to be a joint hearing and that there would not be another in the House. The joint hearing, therefore, would be the one and only chance for the Paiutes to make their feelings known. Still, Boyden's response to this situation demonstrated a marked lack of concern. When informed of his mistake by the Wilkinson firm, he merely replied, "I will be very pleased to hear of the developments which took place at the hearing."[26]

As the joint hearing proceeded, Watkins called Commissioner Glenn Emmons as the second witness. Emmons argued that the government did not necessarily have to obtain the Indians' consent before terminating them. "As a trustee," he noted, "the Federal Gov-

ernment must make the final decision and assume the final responsibility." He also pointed out, however, that the Indians themselves would have the opportunity to offer their views to the joint committee.[27] Apparently he referred to future hearings and not the present one, because none of the Paiute representatives had been given the opportunity to appear. The BIA had, in fact, "authorized" delegates to attend the hearing, "provided that the particular groups concerned have ample available funds to cover the expenses of such a trip." The bureau also warned that no federal funds would be available for travel expenses and that no advances would be made to delegates who might run out of funds while in Washington.[28] Given the general poverty of these people, it is unlikely that any of the Paiute bands had the necessary resources to fund a trip to Washington.

Watkins had a strategy to cover this rather glaring omission. He claimed that the Paiutes had informed him that they would probably not be in attendance and that they wanted him to convey their views to the committee.[29] Watkins's assertion seems dubious at best, considering the fact that at the time only the Kanosh band had shown any interest in termination, and then only because of the presumed influence of the oil executive. At the time of the hearing, none of the other three bands had demonstrated any interest in the proposal at all. All four bands clearly failed to meet the consent criteria for termination, either because they had not been asked or because they were uncertain about it.[30]

As the hearing continued, direct questions about tribal agreement met with ambiguous responses. Watkins disingenuously asked Superintendent Gilmore of the Uintah and Ouray Reservation if he knew of any protests from the Paiutes. Gilmore surprised the senator by affirming that he did. While at Kanosh, the superintendent noted, he had asked the Paiutes if they wanted the bureau services terminated. After considerable discussion, the Indians told him that they did not. Watkins seemed surprised by this answer, but like any experienced attorney he shifted the focus by questioning Gilmore's knowledge of the scattered Indian bands.[31] Gilmore became defensive and the moment passed.

Very little of the testimony presented at the hearing centered on whether the Paiutes were actually ready for termination. In general, Watkins and his colleagues used the convoluted argument that,

since the Indians were already in poverty and were receiving only limited government assistance, the federal trusteeship was not doing them any good. Watkins offered that "while they are very poor in this world's goods, I think they have gone a long way toward full citizenship. They are prepared to take on the obligations as well as get the benefits from it."[32]

At the same time, a closer examination of the individual bands revealed that only the Kanosh Paiutes had anything resembling an economic livelihood. This tiny group had a tribal farming enterprise of about a thousand acres and a grazing service. At one point they managed to obtain a loan of $25,000 from the BIA's revolving credit fund, and they received several thousand dollars' worth of assistance from the Soil Conservation Service. In other words, the Kanosh Indians, who received the most federal assistance, were the ones in the best condition. Yet this obvious contradiction was lost on the committee members. Watkins and his associates persisted in the notion that the best way to help these Indians was to take away what little they had. The various small bands of Indians in Utah did possess land—some sixty-three thousand acres of it. However, because the Paiutes made very little use of it (nor did anyone else, for that matter), the joint committee deemed it to be of limited value.[33]

As the hearing continued, it seemed that no one in attendance would speak for the Paiutes, not even Joseph R. Garry, who was attending as a representative of the National Congress of American Indians. After reading a brief statement of opposition to termination in general, Garry offered his opinion that the Paiutes had been well spoken for. He also pointed out, however, that the tiny bands were not members of his organization and that he was not familiar with their circumstances. Apparently the Southern Paiute bands of Utah were so obscure that not even the nominal defenders of Indian rights had the time or resources to assist them.[34]

Finally, just before the hearing came to a close, one rather surprising witness came forward: Glen Wilkinson, the younger brother of Ernest Wilkinson and acting head of the Washington office of Wilkinson, Cragun and Barker. Wilkinson offered the only dissenting testimony. At that time he represented the Shoshone and Southern Paiute tribe of Nevada in claims filed before the Indian Claims Commission, so he had a vested interest in the outcome of the legis-

lation. He informed the committee that certain amendments already made to the bill might unintentionally hinder the prosecution of future claims cases. But in raising the question of legislative intent he also incurred the wrath of Representative James G. Donovan of New York, who seized the opportunity to lecture Wilkinson on the real purpose of the bill. Could not the attorney see, queried Donovan, that the bill would enfranchise these Indians and put them "on the same basis as all the white or yellow or dark citizens" of Utah?

Wilkinson answered: "Not in my judgment. They are enfranchised already. This takes away some privileges that other citizens do not have. But so far as I can see, as applied to these six groups [Shoshone bands included], it doesn't give them any benefits whatever." Representative Donovan betrayed no evidence of having understood the logic in Wilkinson's answer, but instead quickly silenced the Washington attorney by insisting that termination would put the "Indians of America on the same footing and on the same basis as all the other inhabitants of our country."[35]

The joint hearing adjourned on this sour note. It proved to be the only public hearing on the Paiute termination legislation (S. 2670), and it concluded without the voice of a single Paiute assenting to the action. Glen Wilkinson's testimony before the joint committee constituted the only challenge to the convoluted purpose of the legislation. As events later demonstrated, Wilkinson's comments also hinted at the misgivings the two Wilkinson brothers increasingly felt about the Paiute termination proceedings. The evidence suggests, in fact, that the Wilkinson, Cragun and Barker firm monitored the Paiute termination process more carefully than the Paiute's own legal counsel, John Boyden.

Boyden and the Wilkinsons maintained regular contact over Paiute and Ute legal matters because of what can only be described as an unusual business relationship. In the early 1950s, Boyden technically joined the Wilkinson firm as a partner, but he maintained his own law office in Salt Lake City and rarely participated in firm-related business.[36] While the Wilkinson firm prosecuted claims cases for the Northern Ute and Southern Paiute tribes, Boyden handled the tribal and other legal affairs for the Utes and the four Utah bands of Paiutes, including matters relating to termination. Consequently,

Boyden relied on the Wilkinson brothers to keep him informed about developments in Washington. On the day of the Paiute termination hearing, for example, Glen Wilkinson wrote to Boyden and informed him that he would be in attendance. He promised Boyden that he would keep him informed of "any unusual developments."[37] The younger Wilkinson knew enough about Watkins and the legislative process to appreciate that the outcome was foreordained.

With so little organized opposition apparent at the hearings, and with Watkins in complete control, the Paiute termination bill moved out of the Committee on Interior and Insular Affairs and onto the floor of the Senate relatively quickly. Few in Congress appreciated the significance of the legislation or had the slightest familiarity with the tiny Paiute bands affected by it. The only initial delay stemmed from the fact that Watkins also had to conduct termination hearings for the Klamath, Flathead, Seminole, Menominee, and other tribes and could not give his immediate attention to the Paiute bill. This factor worked against the Paiute bill in another way as well, for in comparison to the controversy and attention the hearings for the better-known tribes generated, their proceedings were essentially ignored. Despite the obscurity of the legislation, Watkins worked to get it through the Senate, but the House frustrated his plans by passing a version that removed the two Shoshone bands from consideration, necessitating a conference committee. The resulting delay meant that the Paiutes were not the first Indians to be terminated, although they were the first to be considered.[38]

In the meantime, some members of the affected Paiute bands began to view the legislation as a possible method of acquiring at least a small amount of income for their families. Potential income from the sale of reservation land worked as a prime motivator, particularly among the Indian Peaks Paiutes. The six families constituting that band received few of the benefits or services provided by the BIA to Indians of larger tribes. While they did possess a reservation of some 10,240 acres in Beaver County, Utah, none of the members lived on it or near it for the simple reason that the reservation consisted of semi-desert rangeland seventy miles from the nearest settlement. Most members preferred to live near Cedar City, where they received occasional assistance from Mormon Church welfare system. The BIA contended that it provided no services to the Indian

Peaks group and that termination would therefore create no special hardships. But in making this claim the bureau failed to mention that it actually had provided limited health services and Johnson-O'Malley funds to the Indian Peaks and other Utah Paiute bands.[39] Nevertheless, to the bureau, the sale of the Indian Peaks Reservation seemed the most logical (or at least the most convenient) solution to the poverty of these people.[40]

On the other hand, the bureau could have argued that the Indian Peaks band might have benefited greatly from an *expansion* of services rather than from their withdrawal. To cite but one supporting example, research conducted during the summer of 1954 on the background of the Indian Peaks Reservation uncovered the fact that a lessor paid the band an annual rate of $525 for summer grazing rights on Indian Peaks land. The rentals had accumulated to over $3,500 because no one in the bureau bothered to notify the members of its existence.[41] Thus the leasing revenues sat on deposit in the U.S. Treasury while the Indian Peaks band continued in poverty.

John Boyden knew of the situation of these people, and he took the sale of the Indian Peaks Reservation as a matter of urgency. He had already worked for two years with bureau officials in an attempt to alleviate the Paiutes' poverty. Uintah and Ouray superintendent Forrest Stone initiated the process in June 1952 when he arranged a meeting with the Indian Peaks band to discuss two important issues: the need for the members to hire an attorney, and the potential benefits of selling or trading their reservation.[42] Stone apparently intended for Boyden to serve as the new counsel, since he invited Boyden to attend the meeting. Boyden accepted the invitation, and he agreed to represent the Paiutes after Stone convinced them to extend a contract to him.[43]

Thereafter, Boyden busied himself with the task of finding prospective buyers for the Indian Peaks Reservation. At one point in 1952 he arranged a trade for the band's rangeland in exchange for agricultural land in Beaver County, Utah, but field representatives for the BIA found the deal unsatisfactory.[44] Nevertheless, at the time the bureau employees agreed that the sale of the reservation offered the best solution to the poverty of the Indian Peaks people. In April 1953 Boyden met again with the band and informed the members that Commissioner Myer had agreed to approve the sale of the reser-

vation, provided certain provisions were included in the contract. The group readily assented to this, and afterward the new superintendent, Harry Gilmore, asked members what they planned to do with the money. Gilmore told them that a congressional act would likely be required to disburse the funds and that Congress would want good use made of it. Most of the Paiutes said they wanted to buy homes, which presumably met the criteria.[45]

By the early summer of 1954, as the Paiute termination bill progressed through Congress, Boyden had still not found a buyer for the reservation, and the Indian Peaks members became more insistent that something be done. The Indians seem to have understood little of the consequences of termination, aside from the desire for the reservation proceeds. Boyden, therefore, decided to draft the additional legislation to dispose of the reservation before the termination process went into effect, knowing that once the termination bill became law the sale would be postponed until after a lengthy transition period. Superintendent Gilmore suggested that the bill also include authorization for a per capita payment from the reservation leasing proceeds. Gilmore also felt the need to move quickly, and he reminded Boyden that the Indian Peaks people "need money now with which to improve their homes and better living conditions in general."[46] Accordingly, Boyden inserted this provision into his draft and sent it on to Senator Watkins, who submitted it to the proper congressional committee. Although the new bill (S. 3570) did nothing more than provide for the sale of the reservation and authorize a per capita payment, Boyden believed that Watkins would support it for reasons of expediency and out of compassion for the needs of the Indian Peaks Paiutes.[47]

As the summer of 1954 reached its midpoint and the congressional session neared its end, Boyden became increasingly anxious about the fate of his bill. He contacted several officials in the BIA and the Interior Department to urge its passage, including Secretary Lewis, who wrote to the chairman of the Senate Committee on Interior and Insular Affairs, Guy Cordon, informing him that the Indians were "eager for immediate authority to sell their reservation lands, which they do not use themselves, [and therefore] the enactment of a separate bill for that purpose seems justified."[48] Boyden informed Commissioner Emmons of his willingness to help move the

legislation, stating that he was "ready, willing and anxious to assist in any way that I can."[49]

Boyden remained in contact with Senator Watkins's office, on one occasion informing the senator's staff that he and Superintendent Gilmore had met with the Indian Peaks and Cedar City bands of Paiutes and that the Indians were "very anxious that this Bill should pass."[50] Finally, Boyden made use of his Mormon connection in the BIA to muster support for the bill, contacting the bureau's associate commissioner, H. Rex Lee, who assured him that the BIA supported passage of the bill in the current session.[51]

Despite Boyden's expectations that his Mormon colleagues would work for the passage of his Indian Peaks bill, he miscalculated Watkins's motives. The senator did not betray the slightest concern for the economic needs of the Paiutes. His primary focus was obtaining passage for his own Paiute termination bill—and then only for the example it would provide. Consequently, Boyden's bill, despite advancing out of committee, failed for lack of support in the Senate. Watkins's apparent lack of enthusiasm probably stemmed from the fact that Boyden's bill provided only for the sale of the reservation and contained no provisions for termination.

Although it might appear that Boyden proposed his legislation as an alternative to Watkins's termination bill, this was not the case. After Watkins's bill passed into law (P.L. 762) on 1 September 1954, Boyden regretted only that the new legislation required more time and made it more difficult to sell the Indian Peaks reservation than his own bill (S. 3570) would have done. Yet he felt that it could still be accomplished. As he told Superintendent Gilmore, "Since our bill did not pass, if it is the desire of the tribal members that I proceed under this bill, I will be very happy to cooperate with you in the administration of this termination bill in accordance with the contract I have with the Indian Peaks Indians."[52]

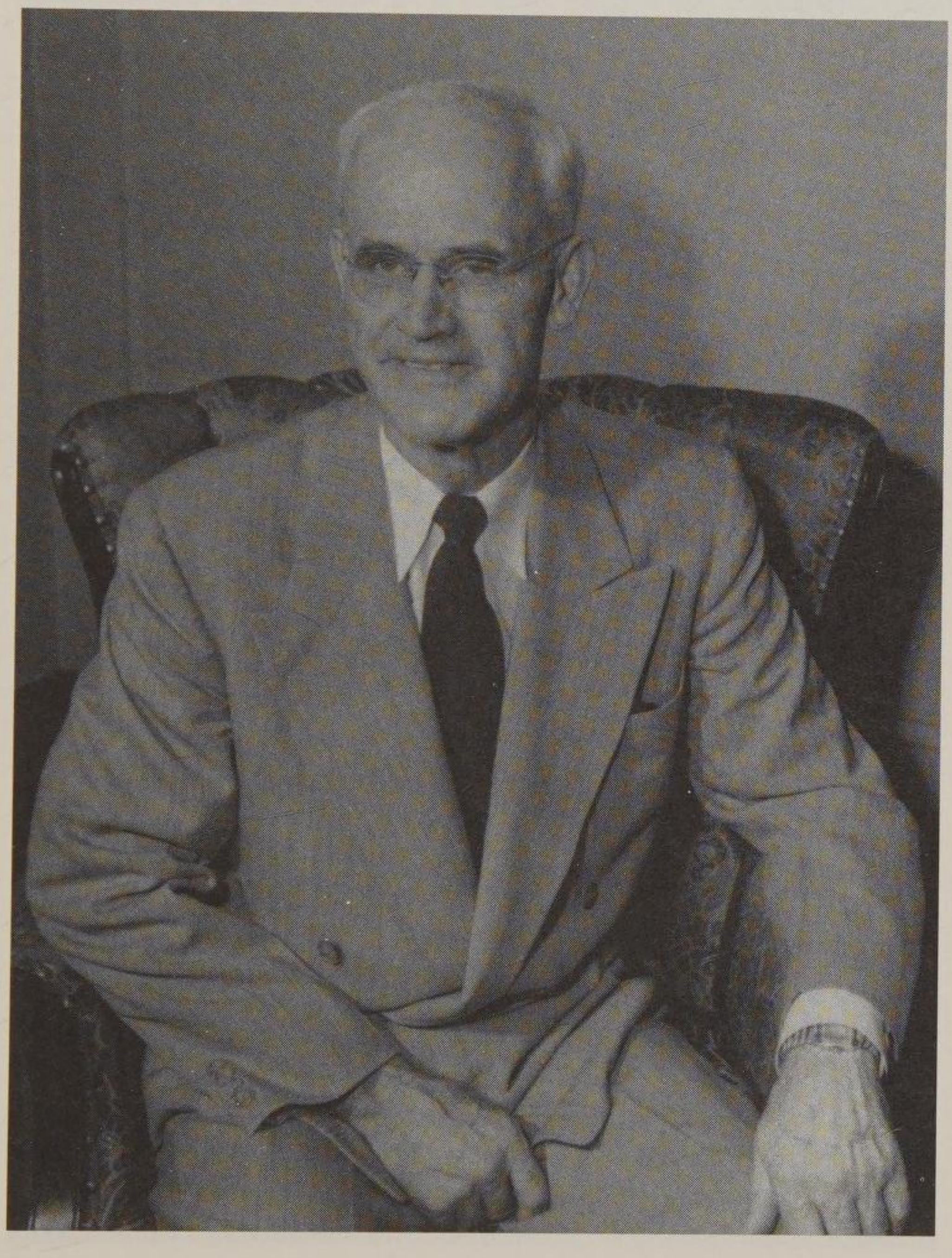
While the Indian Peaks band sought to sell their reservation and ultimately accepted termination as a method of accomplishing that objective, members of other bands made strenuous efforts to halt the termination bill once they understood the legislative intent. The Kanosh Tribal Council, in fact, was probably the most vociferous in denouncing termination. On 21 July they sent a telegram to President

Eisenhower that said, quite directly, "We are against Federal termination bill S. 2670. We desire to remain for the time being as wards of the Government, as we have lived on the reservation and have not paid taxes for so long and we feel we should live as we have always lived."[53]

The White House passed the telegram to Secretary Lewis, who undoubtedly understood the importance of the Kanosh protest, and he promptly forwarded it to the chairman of the Interior and Insular Affairs Committee. But Senator Cordon, in deference to Watkins, coolly responded that "the legislation to which they refer has already progressed so far that it is doubtful whether any further changes can be made."[54] A few days later the Koosharem Paiutes also protested, again in the form of a letter addressed to the president. This time the White House forwarded the message to the BIA's acting commissioner, W. Barton Greenwood. Written by Jimmy Timikin, "Speaker for the Paiute Tribe, at Richfield Utah," the letter straightforwardly protested the pending termination of the Kanosh band. Timikin pointed out that the Koosharem band had only about sixty members, of whom only twelve could read and write. He asked for more time so that the members of his band could learn more about what they were entitled to as Indians. Then he stated, "We do not wish Termination. Hoping to better ourselves."[55]

Greenwood followed protocol and forwarded the letter to the chairman of the Interior and Insular Affairs Committee, who had responsibility for the pending legislation. Just as before, the Koosharem protest letter received a bureaucratic response from Senator Cordon, who replied that "the legislation to which he refers is already far along toward enactment, and I do not imagine it will be possible to make many changes at this late date."[56]

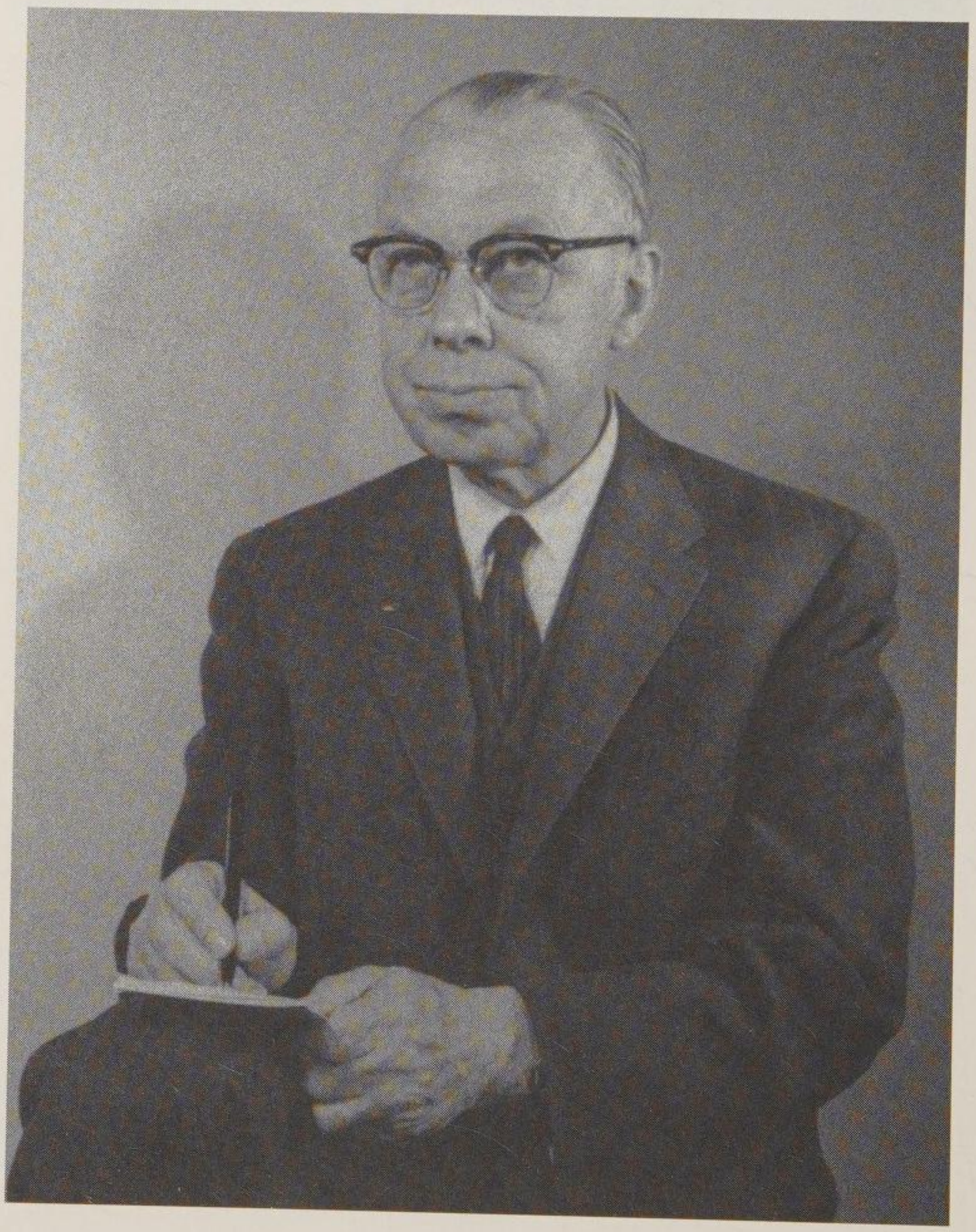
Timikin made one other interesting point in his letter to the president. He noted that on 21 May 1954 the band had transmitted a telegram to the Association on American Indian Affairs (AAIA), informing the organization that the members of the Koosharem and Indian Peaks bands opposed termination. That telegram found a receptive audience with the AAIA and eventually brought results. Some months later—too late to forestall the termination bill—the AAIA took up the story of the Utah Paiutes in a newsletter article circu-



Arthur V. Watkins during his 1952 reelection campaign

LEFT TO RIGHT: Francis McKinley, Superintendent Forrest R. Stone, Reginald ("Rex") O. Curry, and land use specialist James M. Steward examine a map of the reservation.

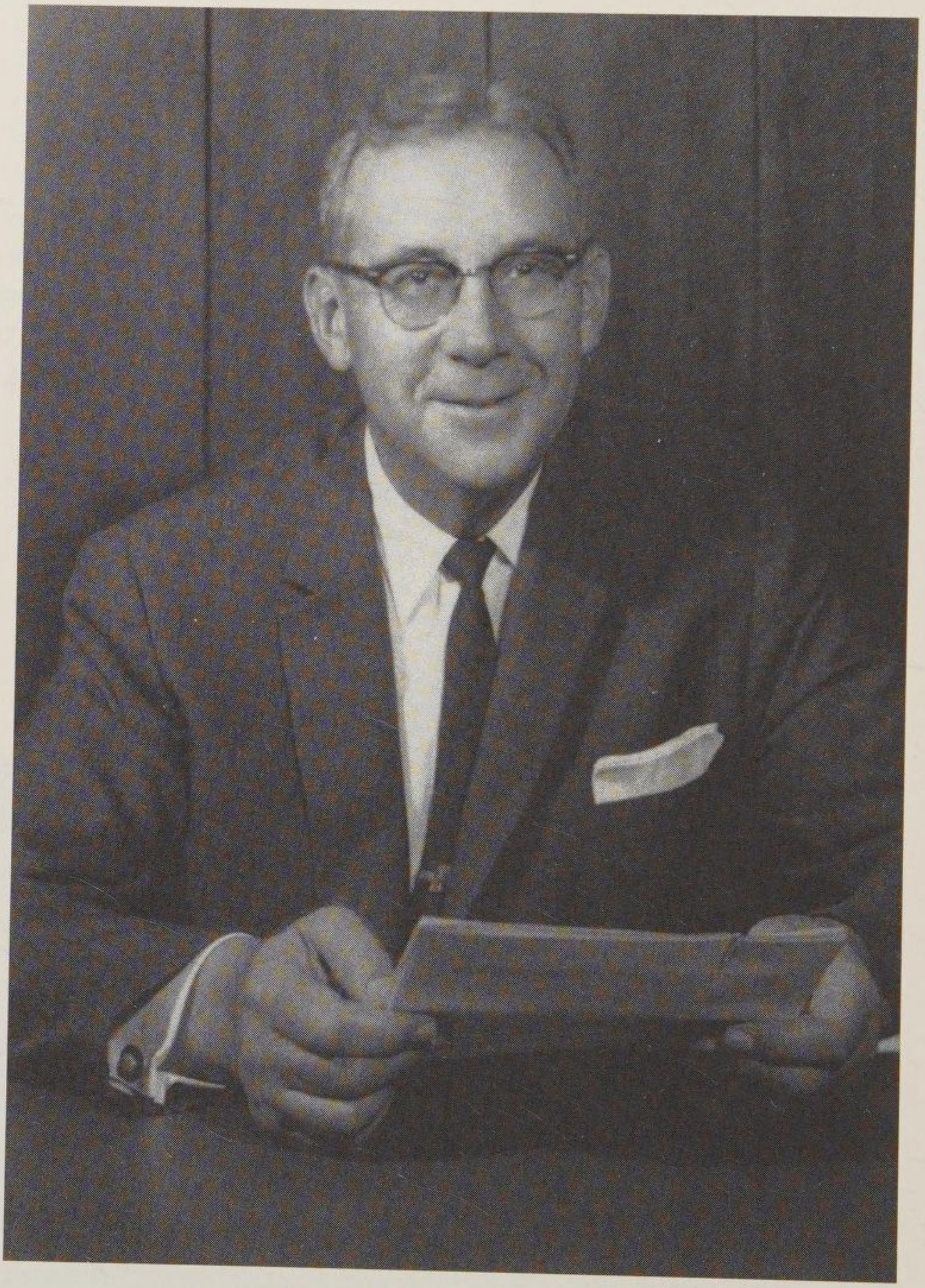
Congresswoman Reva Beck Bosone



Tribal claims attorney Ernest L. Wilkinson

LEFT: Ute tribal members applying for per capita payments in October 1951

BELOW: Uintah Utes waiting at Whiterocks for per capita payments in October 1951



Tribal attorney John S. Boyden

lated to potential contributors. Interestingly, a copy of the newsletter reached Ernest Wilkinson, accompanied by a fund-raising letter personally signed by Oliver La Farge. The letter expressed the author's usual sentiments, all of which were well known to Wilkinson. La Farge wrote that he deplored the status of Indian policy, which he termed "increasingly ominous," and that he despaired over the loss of Indian land and the attacks on tribal authority. As he put it, "The 'termination' program begins to look less and less like a mere effort to end Federal jurisdiction and more and more like a plan to obliterate Indian life from the American scene." La Farge added, "Unless the present vicious trend is reversed, 1955 may add a black and shameful chapter to our history."[57]

Wilkinson probably read these lines with his usual detachment. But then the newsletter continued with a discussion of the Paiute termination proceedings, which undoubtedly piqued Wilkinson's interest. The pertinent paragraphs read:

> The Proposal to terminate four backward groups of Paiute-Shoshone Indians of Utah (now Public Law 762) was a test of administration attitudes. Its enactment is ominous in the extreme.
>
> Admittedly, these Utah Indians—as appears in the Interior Department's own reports—are poorly-educated, with many illiterate; and very poor, with more than half wholly or partly dependent on charity and relief. Their average income is less than one-half that of non-Indian neighbors.
>
> Apparently aware of the facts, the 83rd Congress did not include them in its original termination program. The late addition of a bill (S. 2670, H. R. 7390) to terminate them was justified, not by their readiness, but by the argument that little had been done or was being done for them by the Federal Government and they would be better off on their own. It was also generally understood that these (at first six) bands wanted an end of their Federal status.[58]

But then, as the newsletter continued, protests from these Indians "unexpectedly" reached the AAIA and were transmitted to Congress in May. The newsletter went on to note that the termination bill ignored the "fundamental objection that unprepared, backward In-

dians are being terminated before Federal obligations have been met."[59]

The AAIA newsletter and the personal appeal from La Farge had some effect on Wilkinson, who, in his position as president of Brigham Young University, necessarily relied on his brother Glen for information about these matters. Curious to know if what he had read accurately portrayed the Paiute situation, Wilkinson forwarded the pertinent materials to his brother with the query, "I am enclosing the attached letter because you may not have seen it. What is your recommendation to me?"

Glen Wilkinson replied that he had already written to La Farge and the AAIA on behalf of the law firm and informed them that "although we appreciate the work they are doing, we feel that we cannot become officially connected with the organization because their objectives may, conceivably, be at variance with those of our tribal clients." But the younger Wilkinson continued with a personal note: "Aside from this, I am inclined to agree in principle with the objections this organization sets forth to withdrawal legislation. I believe it is being too hastily enacted without proper planning and without proper deference to the wishes of the Indians involved."[60]

Perhaps due to his brother's advice, the elder Wilkinson's support for termination softened somewhat over the course of 1954. Watkins's heavy-handed tactics also contributed to Ernest Wilkinson's disaffection, particularly the methods he employed in the Paiute termination effort. Apparently Watkins had informed several of his congressional colleagues that his real reason for terminating the Paiutes was to force the Mormon Church to come to their assistance. He argued that as long as the Paiutes were on government rolls, the church would not intervene, as it had done in the case of the Cedar band of Paiutes.[61] Watkins undoubtedly believed that the church could render more effective relief than the federal government, but whether he actually expected this to happen or merely concocted the story to allay concerns about terminating these relatively defenseless Indians is unclear.

At any rate, Ernest Wilkinson did not take an active role in the Paiute termination debate until Watkins dragged the Mormon Church into it. Then he voiced his disapproval to the highest earthly tribunal that he personally acknowledged, the First Presidency of

the Mormon Church. Writing in conjunction with his ecclesiastical position as a member of the church's board of education, he informed church leaders that

> Senator Watkins has introduced in the Congress a number of bills for the termination of Federal guardianship over Indian tribes. Some of those bills would terminate Federal guardianship over the Koosharem, Shivwits, Indian Peaks and Wahnquits groups of Indians, all of whom are in Utah. In point of fact Federal guardianship has meant very little to these particular groups of Indians anyway, for they have received little, if any, help from the Federal Government. Senator Watkins, however, has informed several individuals that his reason for terminating the Federal guardianship is that he thinks that if everyone knows they are receiving no support of any kind from the Government, the Church will be more responsive to their needs. The Executive Committee thought you should know of this viewpoint and statement of Senator Watkins.[62]

While it appears from the foregoing that Wilkinson was bothered more by Watkins's tactics than by his objectives, other evidence suggests that Wilkinson had begun to question the methods employed by the terminationists. When one of his deans at Brigham Young University, for example, asked Wilkinson if he should resign his position on the board of directors of the AAIA, because after reading one of the association's newsletters he had come to believe that the organization stood in the "road of progress," Wilkinson responded that "there are two sides to this story. . . . The appeal from Lesser [executive secretary of the AAIA] is a little one-sided, yet it is a debatable question."[63]

By the time the Kanosh and Koosharem Paiutes submitted their letters of protest, the termination legislation was, to use Senator Cordon's phrase, "far advanced." With Watkins pushing the legislation through the conference committee, the compromise Paiute termination bill passed Congress without difficulty. President Eisenhower signed the legislation, and it went into effect as Public Law 672 on 1 September 1954. As stipulated, the Paiutes had only until 21 February 1957 to prepare themselves for the discontinuation of govern-

TABLE 2: *Government versus tribal membership identification*

Membership	Shivwits	Koosharem	Indian Peaks	Kanosh
Total members identified for 1954 hearing	97	27	26	27
Total members identified on final rolls	130	34	26	42

Source: Federal Register, 14 April 1956.

ment services. Even this process was bungled, however, because the BIA did not establish a withdrawal office in Cedar City until the end of 1955, leaving only slightly more than a year to make necessary arrangements. During those short months, bureau officials met repeatedly with the various Paiute bands to inventory and appraise property and to arrange for the disposition of tribal land.

Ironically, the disorganized nature of these bands—the main reason why they were easy targets for Watkins's termination program—also made it difficult in some ways for bureau officials to meet the withdrawal criteria. Superintendent Gilmore, working out of his office at Fort Duchesne on the Uintah and Ouray Reservation, found that only two of the four bands (Kanosh and Shivwits) possessed actual constitutions created under the Indian Reorganization Act and that none of the four had any tribal ordinances or resolutions governing membership. Preparing the final tribal rolls for termination proved difficult, therefore, because the bands lacked a legally prescribed method for determining who held membership.[64] The bands tended to be more inclusive in defining membership than were BIA officials, who preferred blood quantum restrictions over the broader kinship definitions used by the Paiutes. As a result, the final rolls of the four bands (excepting the Indian Peaks band) proved to be somewhat larger in number than Congress had been led to expect (see table 2). Leaders of the various groups obtained affidavits to establish membership, but that method proved less than satisfactory to BIA officials. In typical bureaucratic fashion, then, the bureau decided to require the bands to pass resolutions defining membership so that the members could then be terminated.[65]

Despite these obstacles, most of the termination requirements were completed by the legislative deadline of 1 September 1956, and

six months later the Paiutes were officially terminated. The final rolls, published in the *Federal Register* on 14 April 1956, showed that the number of Indians terminated included 130 Shivwits Paiutes, 42 Kanosh Paiutes, 34 Koosharem Paiutes, and 26 Indian Peaks Paiutes. In total, Watkins's program terminated 232 Utah Indians.[66]

Interestingly, one other significant opponent to the termination process took notice of these proceedings, albeit also in the aftermath: John Collier, the former commissioner of Indian Affairs under President Franklin D. Roosevelt and chief architect of the Indian Reorganization Act of 1934. In an editorial written for *The Nation*, Collier argued that the law terminating the four small bands of Utah Indians would "have a statistically infinitesimal effect, but is massive as to precedent and policy, and representative as to method." After reviewing the dubious history of this legislation, Collier cut to the heart of the matter: "Trivial as well as heartless when locally viewed, this bill, now law, was announced as a model for all termination bills."[67] Collier feared that the Paiute termination bill might be exactly what Watkins intended it to be: an example for other Indian tribes.

Following termination in February 1957, the Utah Paiutes slid into the long shadow of obscurity and poverty. Cut off from bureau health, education, and employment programs, many succumbed to alcoholism and early death. According to state welfare reports, several families subsisted on state or church welfare supplemented by seasonal migrant labor. A report compiled in Washington County in 1962 found a universal worsening of conditions among the Paiutes. Many of the Shivwits still lived on former reservation lands, only without any services.[68]

Assistance rendered by local Mormon bishops and congregations at Richfield, Kanosh, Cedar City, and in the St. George area helped alleviate some of the suffering, but it also perpetuated paternalistic relationships and dependency. The one hopeful development occurred in late 1964 with the news that the Wilkinson and Boyden law firms had reached a settlement for the Paiute claims filed with the Indian Claims Commission. Ironically, the settlement was approved by Arthur V. Watkins, then the chief commissioner of the ICC. The Southern Paiutes of Nevada and Utah received an award of

$7.3 million in compensation for the loss of more than 26 million acres of land, but the Indians had to wait until 1971 to receive their per capita share.

The ICC award money helped the Utah Paiute bands improve their living conditions and educational level. It also sparked an organizational awareness that led to the formation of the Utah Paiute Tribal Corporation in 1972. The following year, the four bands embarked on a long, difficult campaign for the restoration of tribal status that culminated in the passage of the Paiute Restoration Act, Public Law 90-227, in April 1980.[69]

5 TRIBAL ALLIANCES AND TRIBAL DIVISIONS

Over the course of 1953 and early 1954, while Senator Watkins and the officials in the BIA Division of Program worked out the details of Paiute termination, the situation on the Uintah and Ouray Reservation grew increasingly chaotic. The gulf between the mixed-bloods and the full-bloods widened as each group developed a list of grievances against the rest of the tribe. Bureau officials responded to the situation by playing up the threat of termination, hoping that the Utes would band together and produce a development plan out of necessity. The threat, however, was more real than the bureau imagined, for at that moment Senator Watkins increased the pressure by reiterating his threat to tie up the Colorado judgment funds until the tribe produced a long-range termination plan. With the stakes thus substantially heightened, the two Ute factions fought a protracted political battle over membership—a convenient cover, as it turned out, for the real issue dividing the membership: control of the judgment money. Ultimately, the threat of termination resulted in a hastily reached decision to sever part of the tribe and partition the assets.

In the spring of 1953, members of the largely mixed-blood Uintah band resented the use of judgment funds for expensive, long-range tribal projects, and they continued to boycott the adult education meetings sponsored by the Tribal Business Committee and the Planning Division. Rex Curry and his fellow members of the Tribal

Business Committee attempted to overcome the boycott by sponsoring a series of fifteen-minute radio programs on the Vernal station KJAM. As Curry described it, the bilingual programming consisted of a "combination of news broadcasting and commentary on the events concerning the Reservation."[1]

The broadcasts failed to effectively curtail the opposition, however. That spring one member of the Tribal Business Committee, Sarah Hackford, emerged as an important ally of the mixed-blood group. Hackford used her access to tribal government to sponsor a petition from the mixed-bloods calling for the "abolition of the Indian Reorganization Act." Apparently the mixed-bloods, not realizing that only Congress could rescind the IRA, believed that the best way to combat the Business Committee was to attack the legislation that brought the Ute tribal constitution into existence in the first place.[2]

Curry and the Tribal Business Committee countered by insisting that Hackford and the opposition group follow constitutional procedures in making their proposals. Hackford then produced another petition signed by fifty-two voters calling for a General Council meeting of the tribe. The council convened on 10 April, and much to the surprise of the tribal leaders, a large group of mixed-bloods gathered to hear the harangues of a rather enigmatic person, known to the crowd as Frank Tom-Pee-Saw, who claimed to represent an association variously known as the League of North American Indians, the League of Nations of Pan American Indians, or the Pan American Indian Association—all names for an organization he said existed to help Indian tribes defend themselves against government intrusions. In particular, he argued that tribal attorney John Boyden did not faithfully represent the interests of the Ute tribe and that the Indians should not have to pay federal income taxes.[3]

Not surprisingly, the meeting proved to be quite raucous, with much arguing but very little constructive deliberation. The assembly finally decided to appoint a committee of twelve to study the possibility of amending or repealing the tribal constitution, with recommendations to be presented to the tribe on 25 May. Each of the three bands could appoint four members to the panel, but the Uncompahgres refused. The Uncompahgre representatives later informed Rex Curry and Francis McKinley that they did not want to become in-

volved in the mixed-blood campaign against the tribal interests, because, in fact, they considered most of the problems to be the fault of the mixed-bloods. Privately this group began to consider the possibility of withdrawing from the tribe and forming their own governing body, because, as Curry put it, "they believe they will have no peace until they have separated themselves from this group of people that have caused so much confusion."[4]

In the meantime, Frank Tom-Pee-Saw and his Pan American group formed a reservation chapter, with Sarah Hackford as the leading member. Hackford's daughter purportedly served as the group's secretary, while the elder Hackford solicited donations to buy Tom-Pee-Saw a car—apparently in an effort to assist his work.

By early May the BIA headquarters in Washington became concerned about the growing rift between the mixed-blood faction and the full-blood Utes. Robert Bennett, an Oneida Indian then working as a program officer within the BIA Division of Program—the office responsible for developing termination plans—telephoned Area Director Ralph M. Gelvin to get information about the situation. In response Gelvin reported "considerable dissension" by a "minority tribal group" and informed Bennett that the mixed-bloods were upset about limited per capita payments and the liability for income tax on the same. They even sought to have Curry and Boyden fired from their positions. Gelvin added only that one of his assistants would investigate and make a full report.[5]

Julius Murray, a leading member of the Uintah opposition and a member of the committee appointed to study possible revisions to the Ute constitution, shared the mixed-bloods' concerns. Following the General Council meeting he wrote a letter to President Eisenhower protesting the payment of income taxes. His letter generated a response from Interior Secretary Orme Lewis, who informed him that the government collected the tax from the Utes because the Uintah and Ouray Reservation treaty provisions did not include any guarantees of tax immunity.[6] In a more significant move, Murray also wrote to Senator Watkins and argued that the Uintahs wanted to separate their business dealings from the Uncompahgre and Whiteriver Utes. He felt that the way the reservation was being run threatened the business interests of the Uintahs. "No one can expect any fair treatment," he said, "especially if you happen to oppose the

powers that be."[7] Murray also contended in his letter to Watkins that the tribe usurped Uintah money to fund "jobs and projects created under the Colorado Judgement," rather than using funds earmarked for that purpose. Most interestingly, Murray informed the senator that the Uintah Utes, despite the tribal constitution created under the IRA, had maintained themselves as a "separate, distinct and identifiable group" on the reservation.[8]

In the face of these complications, the bureau attempted to maintain the programming effort and to discredit the opposition. The Division of Program dispatched Bennett to the reservation in late May 1953 to deliver Senator Watkins's letter to the tribal leadership and to quell opposition to the Tribal Business Committee and the programming effort. Bennett quickly discovered that "the minority group" (which he later identified as primarily mixed-blood Uintahs) wanted direct per capita distribution of the Colorado judgment monies and that they had become "quite vocal" under the leadership of Frank Tom-Pee-Saw.[9] While on the reservation, Bennett worked with the Business Committee to counter Hackford's opposition. He informed his superiors that she was "continually fighting her co-members and stirring up the tribal membership." The Business Committee found itself in turmoil over many things at that time, including the status of the funds of minors—a problem that would grow in importance in later years.[10]

Bennett also sought to discredit Frank Tom-Pee-Saw, who turned out to be a con artist specializing in duping Indians and bureau employees. His real name was Frank W. Kirk, and he advertised himself as a Cherokee Indian activist. An investigation later conducted by the BIA found that Kirk was not a member of any tribe. His specialty involved traveling around the country and agitating on behalf of Indian tribes, arguing that the government unfairly collected income tax from the Indians.[11] It took several years for the bureau to catch on to Kirk and his methods, but by 1958 BIA officials had learned enough about him to put an end to his activities. In a warning to the House Subcommittee on Indian Affairs, the bureau informed the congressmen that Kirk had been a thorn in their side for several years, working as a sort of freelance lobbyist and con man.[12]

In fact, the BIA developed a "rather voluminous" file on Kirk's activities. It contained evidence that he made his living by represent-

ing himself as having inside connections to the BIA and then collecting retainers for his services. He typically wrote letters to members of Congress and other officials, then used the return correspondence as evidence of his influence. Bureau officials learned, in fact, that the "League of North American Indians" (in its various forms) had never existed except as a front for Kirk, and they also obtained fairly conclusive evidence that Kirk was actually an African American with no discernible Indian ancestry. Whatever his affiliations might have been, he had represented himself as an Indian to the Potawatomis, Shoshone-Bannocks, Elko (Paiute) Utes, and several other tribes. In connection with the Utes, Kirk wrote to Senator Watkins in 1954 requesting information about the status of Ute tribal funds. On that occasion Watkins merely passed the letter on to the BIA, which declined to provide him with any information.[13] Watkins never questioned Kirk's credentials, however. He simply acted on the matter in the usual bureaucratic fashion.

Before the bureau caught on, Kirk got the attention of several government officials, including Senator Watkins and his close associate in the BIA, Associate Commissioner Lee. In 1957, Kirk wrote to Watkins and claimed that he was writing on behalf of 1,750 Utes at Fort Duchesne, each of whom supposedly had fifty dollars deducted from royalty checks for the payment of income tax. He concluded his letter with the following: "We respectfully request you introduce a Senate-House joint resolution requiring an audit by the Sec. of the Interior," and then called for a companion bill authorizing repayment to the Indians. The letter demonstrated a certain sophistication in citing relevant case law and IRS tax rules regarding the tax-exempt status of Indian trust lands.[14]

Failing once again to question Kirk's credibility, Watkins responded with a "Dear Rex" note to Lee asking him to analyze the Kirk letter to determine if a refund was due the Utes.[15] Lee had not heard of Kirk, but he did not question his connection to the Utes. Instead, Lee informed Watkins that he would have the Solicitor's Office look into the matter. He also told the senator that he had asked Phoenix Area Director Frederick M. Haverland to investigate, after which, as he said, "further consideration will be given to the liability of the Indians for the payment of income taxes."[16] Haverland responded to the associate commissioner promptly, and he completely

refuted Kirk's charge that income tax was being withheld from Indian royalty checks. He pointedly stated that "no deductions are being made or have been made from any rents, royalties, or bonuses" and then somewhat caustically added, "The agencies in this area are aware of the U.S. Supreme Court decision relating to the applicability of the Federal Income Taxes to Indian income. We have followed this decision." But Haverland also used the occasion to finally enlighten his superiors: "Mr. F. Tom-Pee-Saw is one of the most prolific accusers of the Bureau of Indian Affairs. . . . We receive many communications from Mr. Pee-Saw . . . and I have yet to find one of his letters based upon true fact."[17] Without Haverland's intervention, Kirk may have been significantly more successful in carrying on his enterprise.

The bureau finally put an end to Kirk's activities in 1958, when he audaciously attempted to correspond with Commissioner Emmons.[18] Apprised of his activities beforehand, Emmons gave orders to have Kirk's name removed from the mailing list for BIA press releases and other information.[19] In a circular letter, he also warned the area directors that Kirk had "again accelerated his activities among Indian groups," and he provided them with information about Kirk's activities.[20]

Ultimately, Kirk's activities did not prove to be very significant, but on 10 April 1953, when the mixed-bloods agitated against the planning effort—a critical juncture in tribal history—Frank Tom-Pee-Saw made his presence felt. He capitalized on the preexisting bitterness between the tribal factions, the anxiety over per capita payments, and especially the anger that many Utes felt toward the Tribal Business Committee.[21]

Bennett, meanwhile, returned to Washington believing that he had resolved the conflict. At the tribe's General Council meeting on 26 May, the Uncompahgre and Whiteriver Utes quelled the mixed-blood opposition by threatening to withhold Colorado judgment money from the Uintah band (to which most of the mixed-bloods belonged). Then, in a further demonstration of their political strength, the full-blood Utes of all three bands united to secure passage of a new tribal resolution restricting future enrollment to persons of one-half or more Indian blood. To counter these moves the mixed-bloods expected the support of the man they knew as Frank

Tom-Pee-Saw, but Kirk apparently thought better of confronting Bennett and failed to show up at the meeting.[22] Discredited by his failure to appear, Kirk apparently left the reservation and disappeared.

Although the protests of the mixed-blood group had been temporarily stifled, an attitude of confusion prevailed on the reservation. Senator Watkins had much to do with this state of affairs. For one thing, his threatening letter of 12 May 1953 created considerable apprehension by demanding that Curry and the Tribal Business Committee members live up to their promise to develop a long-range termination program. After Bennett delivered the letter to Curry and the committee, someone mimeographed it and copies quickly circulated throughout the tribe. Bennett claimed that the letter had a positive effect, but later events proved his assessment far from accurate. Even he admitted that the threat of termination produced a certain amount of panic. In an official report to his BIA superiors he noted that "rumors are flying around here like bees about '30-day notices,' etc."[23]

Watkins's influence played a critical role at this important juncture, not only because of fears about the pending threat of termination but also because he intervened at a time when the Utes were already deeply divided over tribal membership. This issue came to a head at the 26 May General Council meeting when the full-blood Utes successfully passed the new membership resolution limiting future enrollment in the tribe. The debate over membership qualifications had not changed materially since the spring 1950 attempt to restrict enrollment. These earlier ordinances failed due to the noncooperation of Superintendent Stone, although the tribal ordinance of 26 July 1950, supported by Ernest Wilkinson, remained in effect. It stated simply that all persons of Indian blood on the tribal roll in 1935 were considered to have "Ute blood"—even though some were apparently descended from other tribes.[24]

Even though these earlier efforts to restrict future tribal membership had failed, a few members protested that the tribe operated as if the measures were in force. Oran Curry, for example, wrote to Watkins and protested that children of less than one-half Ute blood were not receiving per capita payments—despite the fact that the tribal ordinance raising membership to one-half Ute blood had been invalidated by the secretary of the interior.[25]

Clearly, the Tribal Business Committee believed that restricting future membership held the promise of mending the rift between the mixed-bloods and full-bloods by establishing a more stringent standard for *future* generations, but once again the new ordinance had the opposite effect. In the General Council meeting, the mixed-bloods protested that they had not received sufficient notice, while the tribal leadership, backed by the full-bloods, steamrolled the measure through. The vote suggests that the minority group abstained from voting. The following day the Business Committee again passed a resolution restricting future enrollment in the tribe to those of one-half Ute Indian blood.[26]

This time the BIA approved the measure, since the vote in the General Council overwhelmingly supported it, but bureau officials harbored significant doubts about what the membership ordinance actually meant. Area Director Gelvin urged the commissioner to accept what he believed to be a majority vote in favor of the measure, explaining that "subsequent to its adoption, enrollment in the Ute Indian Tribe [would] be restricted to persons of not less than ½ degree of Ute Indian blood."[27] However, the Tribal Programs Office of the BIA pointed out to Acting Commissioner Greenwood that Gelvin had misread the ordinance. Actually, the resolution *restricted* future enrollment, but it only affected people born *after* its adoption. Gelvin seems not to have caught this distinction.[28]

Meanwhile, members of Greenwood's administration found other problems with the wording of Ute Resolution no. 600. Greenwood himself asked if the Tribal Business Committee wanted to restrict membership in the tribe to persons of Ute blood—including those in Colorado and elsewhere—or merely to those who "derive their Ute Indian blood from members of the bands comprising the Ute Indian Tribe of the Uintah and Ouray Reservation."[29] Rex Curry acknowledged that the resolution meant to define "Ute Indian Blood" as "Ute Indian Blood of the Ute Indian Tribe of the Uintah and Ouray Indian Reservation, Utah."[30] The Business Committee then passed another resolution to clarify the issue.[31]

Such narrow distinctions over the wording of these tribal membership ordinances gain added significance when cast into historical perspective, for the Ute mixed-blood question has a long and illus-

trative history. The difficulty lies in determining which version of tribal history to believe, particularly in light of the fact that in early 1954, BIA programming officer Robert Bennett wrote a series of highly selective reports for his superiors in Washington. In doing so, he utilized the time-honored bureaucratic practice of rewriting the story to cover his actions, but his version became the official BIA position on the subject.

According to these reports, the three bands on the Uintah and Ouray Reservation willingly shared their funds with one another for most of the first half of the twentieth century, without regard to the derivation of the funds. But, in Bennett's account of these events, the turning point came in 1950 with the $32 million Colorado judgment award, which also followed the "share and share alike" formula. Many full-blood Utes, mostly of the Uncompahgre and Whiteriver derivation, refused to vote on this measure, and it passed over their abstaining protest. He asserted that the Uncompahgre and Whiteriver Utes subsequently believed that the mixed-blood Uintahs made much more effective use of the three-year program, a situation that provoked their resentment since most of the money derived from sources intended for the two Colorado bands.[32] In fact, Bennett made the rather questionable argument that the mixed-bloods largely developed the plan for their own benefit. He also claimed that the Uintah leaders made plans to use the forthcoming Spanish Fork judgment funds for their exclusive benefit, a revelation that increased intertribal antagonism.[33]

Bennett further argued that, regardless of which faction received the most benefit, the evolution of the three-year program demonstrated the divergent desires of the two groups. To bolster his claim, he might well have pointed to the official report on the program, which noted that "experience gained under the three-year program led to the formulation of legislative proposals to partition and distribute the tribe's assets between the Mixed-blood and Full-blood members." And further, "Probably the most significant result of the three-year program was to develop an accent on the divergent interests of the Mixed-blood and Full-blood members of the tribe."[34]

Beyond Bennett's contentions, the larger question about the genealogy of the mixed-bloods remained. Specifically, who were these people? Ute tradition holds that from time to time Indians of Paiute,

Navajo, Shoshone, and other extractions married into the tribe.[35] The "Uintah" Utes descended from several Utah bands that once inhabited central and eastern Utah, and they evolved into a composite tribe following the removal of the Utah bands to the Uintah Valley following the Spanish Fork Treaty of 1865. Some of these earlier bands shared extensive cultural contact with neighboring Indian peoples. The Pah Vant and San Pitch Utes, for example, lived in close proximity to the Kwiumpats band of Southern Paiutes and adopted similar methods of sustaining themselves in the desert environment.[36] The Cumumba Utes, or Weber Utes, lived in the present-day Ogden area and intermarried extensively with the Northern Shoshones. In fact, the Cumumba Utes may have been bilingual.[37]

An even more striking example of cultural exchange may be seen in the circumstances of the Sheberetch and Weeminuch Ute bands of southeastern Utah. These two bands, particularly the Weeminuch, operated in a region devoid of governmental control during the latter half of the nineteenth century. Far from the political and population centers of the state of Colorado and Utah Territory, the Sheberetch and the Weeminuch roamed freely between the Colorado Utes to the east, the Southern Paiutes to the west, and the Navajos to the south. They often served as intermediaries in the systematic cattle raiding that took place in the region. Navajos, for example, frequently used the Weeminuch territory as an escape conduit for conveying cattle northward out of the New Mexico Territory. Much evidence suggests that the Weeminuch occasionally joined with Navajo and Paiute raiders to carry out raids of their own on Mormon settlements in southern Utah. The Ute warrior Autenquer (usually known as Black Hawk in Utah lore) frequently included Navajo and Paiute warriors in his raiding parties.[38]

The salient point is that the Uintah Ute people had a long history of incorporating members of other tribes into their social structure. Hence it is not at all surprising that they continued to adopt Shoshone, Paiute, and Navajo people into the band following the Ute removal to Uintah in the 1860s and 1870s, or that they frequently married into white families in the remote settlements of territorial Utah. Bennett noted that certain non-Indians were adopted into the tribe with the understanding that their children would marry into the tribe—which, according to tribal lore, the children

TABLE 3: *Enrolled membership of the Ute tribe of the Uintah and Ouray Reservation as defined by blood quantum, March 1954*

Ute band	Full-blood	Between full and half	One-half blood	Less than half	Total members
Uncompahgre:	502	143	13	14	672
Percent:	(74.74)	(21.25)	(1.93)	(2.08)	(100)
Whiteriver:	283	23	2	0	308
Percent:	(91.88)	(7.47)	(.65)	(0)	(100)
Uintah:	269	106	74	336	785
Percent:	(34.27)	(13.50)	(9.43)	(42.80)	(100)
Total:	1,054	272	89	350	1,765
Percent:	(59.72)	(15.41)	(5.04)	(19.83)	(100)

Source: BIA, accession 57A-185, box 196, file 9639-52-075.

did not do. He went on to explain that most of these "mixed-bloods" belong to the Uintah bands, and being more "aggressive" Indians, their descendants participated to the fullest extent in the tribal program.[39]

However, in the late 1940s a legal opinion on the subject rendered by the Wilkinson law firm questioned this "purported marriage agreement between the Utes and the Mixed-blood families adopted into the tribe." The firm examined the supposed provision whereby these Shoshones, Paiutes, Bannocks, and other Indians were adopted on the condition that their children marry into the tribe and found that such a contract, if it *ever existed*, would be "void from the beginning because it is in restraint of marriage." In the end the firm concluded that the issue of mixed-blood offspring was at best ambiguous, noting that the courts had generally upheld the rights of tribes to define their own membership.[40]

The contemporary Ute problem stemmed from determining the lineage of the mixed-blood adoptees themselves. Bennett provided one example of this common difficulty: Henry E. Harris, the Paiute ancestor of approximately 190 mixed-bloods, had been adopted into the Ute tribe decades earlier, but it was a matter of some dispute as to whether Harris himself was a full- or half-blood—a question that caused no end of controversy for his descendants.[41]

In his 15 April 1954 report, Bennett contended once again that the origins of the mixed-blood issue dated from the time when the Uintah band adopted Indians of other tribes into the Ute tribe. He specifically noted that adoptees *were* Indians, yet he appeared to contradict himself by arguing that the "majority of the Mixed-blood group are Indians only because their names are on the rolls." An increase in the number of interracial marriages in the decades between adoption of nontribal Indians and the time of his writing probably accounts for this discrepancy, but Bennett said nothing about adopted Uintahs intermarrying with whites.[42]

A careful analysis of the final mixed-blood roll reveals that *all* of the terminated Utes had some degree of Ute ancestry, ranging from one-sixteenth to a full sixteen-sixteenths. The average degree of Ute ancestry for the terminated members tallied 28 percent, or roughly nine thirty-seconds. Owing to the long proximity of the Utah Utes to white communities in central and eastern Utah, it is not surprising to find an extensive pattern of intermarriage between these peoples. Nevertheless, Bennett's claim that a "majority of the Mixed-blood group are Indians only because their names are on the rolls" is demonstrably false.

The final roll also supports the contention that a large number of the mixed-blood members had been adopted from other tribes. Fully 23 percent (115 individuals) of the terminated Utes had ancestry in other tribes, and a large majority of these (85 out of 115) had *more* ancestry in other tribes than in the Ute tribe. One other thing is certain about the mixed-bloods: the overwhelming majority were descendants from the Uintah band.[43] As table 3 illustrates, only 27 Uncompahgre Utes (4 percent of the 672 total) had one-half or less Ute Indian blood. Of the Whiterivers, less than 1 percent (actually .65 percent) had one-half or less Indian blood. Most interesting, however, are the statistics for the Uintah band, which show that 52 percent of the Uintahs had one-half or less Ute Indian blood.

Perhaps the most significant problem faced by the mixed-bloods of the Uintah and Ouray Reservation was the same one faced by mixed-blood people elsewhere in the United States: their relative lack of legal and social standing as a distinctive and legitimate cultural group. Recent scholarship has attributed the "invisibility" of racially or ethnically mixed populations to the "deeply embedded"

racial dualism (white and Indian) in American thought. As Jennifer S. H. Brown has noted, "there is no separate term in common American usage to designate people who combine the two ancestries."[44] An outgrowth of this racial dualism is the traditional belief that mixed-bloods are marginal people, "suspended between cultures" and incapable of inclusion into either group. Consequently, a common stereotype holds that mixed-bloods are psychologically disadvantaged in terms of participation in these societies. A considerable amount of evidence demonstrates, however, that this perception is false. Anthropologists and sociologists have revised the stereotype by showing that such people tend to develop complex, bicultural methods of adaptation, or, as ethnohistorian James A. Clifton puts it, they become "culturally enlarged."[45]

Moreover, according to the notion of racial dualism, membership in cultural groups such as Indian tribes follows lineal descent—or, in the common idiom, bloodlines. It springs from the European concept that one's racial origins determine one's identity and characteristics, a kind of rigid, biological determinism used to explain cultural distinctiveness. But these racial constructs are European in origin and were entirely absent in Native American cultures prior to European contact. Among these indigenous peoples, skin color and other racial characteristics were considered irrelevant. Membership in a clan or band depended instead on language, behavior, social affiliation, and loyalty. According to Clifton, the most common identity question asked of strangers was not "What nation do you belong to?" or "Of what race are you?" More typically, strangers would ask "What language do you speak?"[46]

The fact that Indian tribes came to define membership in terms of blood quantum does more that signal an acceptance of the European construct. As ethnohistorian Melissa L. Meyer has demonstrated, from the time of first contact onward, Indian people learned that Euro-Americans made distinctions between them on the basis of descent and intermarriage. Under American governance, tribal groups discovered that people of mixed descent were "far more likely to be deemed 'competent' and given freedom" to manage their land and other assets. As a result, Indian tribal governments retaliated by derogating the rights and citizenship of mixed-blood members.[47] Control over the "blood ties" of Native peoples became

one more battleground in the war against Indian culture and sovereignty.

But this tendency has confused the older, ethnically derived methods with the newer, racial ones. The problem with identifying Indians by race is that it presumes certain intrinsic characteristics, and since membership in a particular race is derived entirely from parentage, as the theory goes, one can do little to alter or escape it. Indeed, in the Euro-American tradition, Native peoples have been presumed to possess certain controlling characteristics of behavior and physiognomy.[48]

Although defining tribal membership criteria according to race has come into serious question in recent years, in the 1950s the Utes followed the standard administrative procedure. In his definitive study of American Indians and the 1980 census, C. Matthew Snipp noted that Indian tribes have historically relied upon an administrative definition derived from the blood quantum theory to delineate membership.[49] This theory holds that the amount of "blood" a person possesses from a particular race determines the degree to which that person resembles and behaves like other members of that race.[50] However, since racial blood types cannot be directly observed (again, according to the theory), the degree of blood quantum must be inferred from ancestry. As a consequence, most tribes came to rely on some type of benchmark for identifying ancestors considered to be 100 percent members, and tribal censuses taken in the late nineteenth or early twentieth century usually served in this fashion. The Uintah and Ouray Utes (thanks to the intervention of Ernest Wilkinson and the resolution of 26 July 1950) used the 1937 date of tribal incorporation under the IRA as the benchmark.

In more recent times, blood quantum definitions have been undermined by genetic science and social theory. Modern research has shown that genealogical bloodlines do not clearly determine who is an Indian and who is not, nor is there any biologically significant way of determining the degree of "blood" at which at person is considered to be an Indian. As a consequence, blood quantum definitions are no longer legally enforceable for most purposes.[51]

Standards of ethnicity constitute a potentially more accurate way of defining Indian identity, or, in this case, delineating membership in the bands of Ute Indians, for identity according to ethnicity

derives from a common cultural and historical heritage. Typically, ethnicity follows certain standards of speech, dress, and behavior that are not fixed. In other words, people can learn or unlearn—or, for that matter, adopt or reject—these cultural patterns. Groups that define themselves ethnically have a potentially greater capacity for adopting or encompassing new membership.[52] According to ethnohistorians such as Clifton, the pattern of biological inbreeding between people of European, African, and Native American descent has been so extensive that relatively few Indians can trace their ancestry exclusively to full-blood Indians. As Clifton put it, "the Indian population of North America is an amalgam of composite indigenous American, European, African, and other ancestries." In fact, he contends, many contemporary Indians have little or no "native American biological ancestry."[53]

The logical consequence of this tendency to define Indian identity along blood quantum lines is that the process of determining tribal membership has invariably been politicized. At times when Indian identity has been little valued by the dominant society, membership in Indian tribes has been relatively inclusive. Robert Bennett noted, for example, that between 1911 and 1936, a period that might be termed the high point of assimilation policy as applied to the Utes, the three bands freely shared tribal funds, regardless of derivation.[54] Unfortunately, the opposite tendency has also proven true. At times when Indian identity has been highly valued, either for cultural or for economic reasons, tribes have been forced to adopt exclusive membership requirements. In the Ute case, with the tremendous increase in tribal funds from the Colorado judgment and from oil and shale royalties, both the full- and mixed-blood Utes struggled to control the membership process. In other words, with the advent of new money, membership in the tribe became a sharply contested political battleground upon which the blood quantum argument merely served as a convenient excuse for fighting over the real issue—ownership of the money.

One of the most obvious aspects of the struggle over tribal membership is that it coincided with Senator Watkins's campaign to terminate the Utes, which induced the full-blood Uncompahgres to move beyond the usual political measures and take drastic steps to protect both their status as Indians and their tribal resources. Had

it not been for Watkins's interference, the membership issue would probably have subsided relatively quickly. An episode from 1933 is instructive in this regard. During that year the Utes came into a substantial amount of money through the settlement of a few of their claims against the United States. With the prospect of the members receiving large per capita payments, a group of full-blood Utes petitioned the commissioner of Indian Affairs to halt the enrollment of mixed-blood Utes into the tribe. No action was taken, however, and following the disbursement of $1,100 per capita payments the entire matter faded from view. A few years later, with the incorporation of the tribe under the provisions of the IRA, the mixed-blood Utes enrolled without significant protest.[55]

Twenty years after the 1933 incident these circumstances reappeared, but this time the conflict included not only the divergence between the mixed-bloods and full-bloods but also the bitter disagreement between the Colorado and Utah bands over rights to the Colorado judgment funds. The Uncompahgres held legitimate grievances against the formula employed by Wilkinson to share their money with the other Utes, and in time these grievances evolved into genuine animosity among the three bands.[56] The Uncompahgres increasingly came to believe that the government's actions "progressively reduced" their share of judgment monies. The "share and share alike" agreement of 1950 vexed them most of all.[57]

When combined with threats from Watkins, delivered either personally through correspondence or vicariously through BIA personnel, the mixed-blood question assumed even greater importance. Pressure from Watkins often came in the form of visits made by bureau personnel. Bennett, for example, carried Watkins's letter when he visited the tribe in May 1953, and though he personally disliked doing Watkins's bidding, he always carried out his assignments. Watkins's more direct ultimatums came later, but in the meantime bureau officials heeded the congressional mandate and encouraged the Utes to accelerate their planning effort.

Following the May 1953 General Council meeting, termination loomed as a distinct possibility. The bureau again dispatched Bennett to the reservation that August in his official position as program officer to encourage tribal officials to produce their long-range program. He met with Rex Curry and Francis McKinley, explaining

to them the legislative intent behind House Concurrent Resolution 108, as well as the Senate report on the Menominee bill, to "acquaint them with the Congressional attitude." Bennett particularly wanted Curry and McKinley to understand the probability that tribes with money and leadership (i.e., like the Utes) would be the first to be terminated. To prepare the tribe for this eventuality he helped the two Ute leaders develop a new organizational structure to "set the pattern for planning the long-range program and for future tribal administration."[58]

In October the Utes met in General Council and adopted a plan whereby each community would submit proposals to an elected Tribal Planning Board, which consisted of nineteen elected members. Yet, nothing happened beyond the creation of the Planning Board. A month later the Division of Program again directed Bennett to visit the reservation and stimulate the "programming effort." Upon arrival he found the Utes lethargic; apparently they had adopted a strategy of inaction in the hope of eventually getting their money anyway. He also discovered that aside from obtaining the rest of the tribal funds, the Utes preferred that everything else remain "as is." Bennett attended several meetings with tribal groups and afterward reported to his superiors that the Utes did not feel ready to manage their own affairs. Yet he noted that they also understood that they had to produce some kind of planning document for the BIA and Watkins's committee. Bennett therefore concluded that "a program must be developed to meet this situation."[59] Exactly what he had in mind remained to be seen.

Meanwhile, to help spread the word that the Utes would have to learn to manage their own affairs, Bennett agreed to meet with tribal members at the reservation communities of Randlett and Whiterocks. Rex Curry issued a tribal announcement to advertise these meetings. In calling attention to Bennett and his proposed topic, Curry informed the members that "the Ute Indian people will have to prepare . . . a program looking toward the assumption by the tribe of full responsibility for management of their own affairs." Warning that these changes would have a "grave effect," he urged everyone to attend.[60] In the subsequent, heavily attended meetings, Bennett delivered exactly the same message.[61]

Bennett also agreed to address the tribe over KJAM radio in Ver-

nal on 4 November. He told the Utes that they were at a "crossroads where they must choose a course which will affect their future and their children's future for all time to come," and this, he said, came "because of developments in Washington." He then explained House Concurrent Resolution 108 and other related termination legislation in an attempt to impress upon the Utes the importance of creating their own plan. He also spent considerable time explaining how the Menominee tribe had failed to prepare a plan and consequently had a termination program written for them—by Watkins, no less.[62] While Bennett did not favor Watkins's style of forcing the termination issue, he nonetheless hoped his remarks would scare the Utes into action. He later reported that the radio address was designed to promote and explain the tribal programming effort, but he also admitted that he exaggerated the termination threat to the Utes in an attempt to "stir up" the tribe. Perhaps he did not realize at this point how dangerous the threat actually was.[63]

In the aftermath of Bennett's November visit and radio address, the Tribal Planning Board resumed its planning effort in earnest. Needless to say, none of the elected board members had the slightest experience in creating a comprehensive, long-range termination program, and as a consequence they naturally looked to Curry and the Tribal Business Committee for direction. Curry, in turn, relied on Watkins's office and his contacts in the BIA for advice on how to proceed. As a guide to what presumably would follow for the Utes, he closely monitored the evolution of the Paiute termination legislation and maintained contact with its author, Robert Bennett.

The Paiute bill, as noted earlier, originally called for the termination of *all* of the Indians of Utah "excepting the Uintah and Ouray Utes." Curry received draft copies of the legislation and shared them with tribal attorney John Boyden. On 30 December, Curry wrote to Boyden and informed him that on that very day Senator Watkins was in Fillmore meeting with representatives of these "Indians of Utah" in order to go over the Paiute termination bill. He also informed Boyden that the Ute tribe had sent three Indian representatives to the meeting "as observers only to listen and see what is taking place, and what might be in store for us."[64]

Not everyone on the Uintah and Ouray Reservation shared Curry's cooperative attitude on the pending threat of termination. Mc-

Kinley, for one, found himself increasingly estranged from the process, and he strenuously objected to Watkins's strong-arm tactics. Most members of the Uncompahgre band also resented the planning effort, and when the Planning Board issued its preliminary proposals it appeared to John Tabbee and other well-informed Uncompahgres at Ouray that the new program would simply be an extension of the three-year program.[65] As they saw it, the new program would be no better than the old in that the mixed-bloods would once again receive most of the benefits. Some Uncompahgres even asserted that the "real" problems confronting the tribe derived from the fact that the mixed-bloods had taken over the tribal government.[66] In protest of this perceived situation, the Uncompahgre band largely withdrew from the planning process, which had become quite acrimonious anyway. The argument over the mixed-blood issue came up in virtually every meeting, disrupting the proceedings.[67] In light of these developments, the full-blood Uncompahgres decided that the threat of termination demanded that "something new and dynamic" be developed as an alternative. They concluded, therefore, to essentially "go it alone" and argued for a division of the tribe as the best way to confront the problems besetting them.[68]

Early in the new year, leaders of the Uncompahgre band approached McKinley with the idea of developing a new program, the main point of which would be to separate Uncompahgre assets from those of the rest of the tribe. This left McKinley in a difficult position. Although he intuitively sympathized with the Uncompahgres, he was still the tribal planning officer, and support of their proposal meant that he would have to turn his back on Curry and the elected representatives of the Planning Board. Unsure of what approach to take at this fateful juncture, McKinley made plans to attend a conference of the National Congress of American Indians (NCAI) in Washington DC.

Just before the conference came Watkins's 18 February 1954 letter to Curry. In it the senator explained exactly what type of program he would accept, threatening that "further legislation for aid or assistance to the Utah Tribe [would] greatly depend upon the activities of the Tribe in performing in good faith the promise which they undertook in 1950," namely, to formulate a seven-year termi-

nation program. McKinley must have been alarmed to learned that the senator expected the "final phase" of the Ute program to be tendered to him in only ninety days, an unreasonable amount of time by anyone's reckoning. He must have also taken umbrage at Watkins's warning that Curry and the other tribal leaders must ignore Indian rights advocates from the NCAI and the Association on American Indian Affairs. The admonition strongly hinted that Watkins knew all about the pending NCAI conference and its anti-termination agenda.[69]

McKinley attended the conference anyway. The February 1954 "emergency" conference of the NCAI proved to be a pivotal event in the history of the organization because it confronted federal termination policy and specifically addressed the plethora of termination bills then emerging from Watkins's Senate subcommittee. Forty-three tribes from twenty-one states sent representatives to the conference, which ultimately adopted a "Declaration of Indian Rights" calling for the federal government to honor treaty obligations and trust responsibilities. Although we have no record of what McKinley thought of these proceedings, one thing is known: while in attendance he met with Bennett and discussed at length the Uncompahgre proposal to separate from the rest of the tribe.[70] McKinley may have recognized a kindred spirit in Bennett.

By all accounts, Bennett listened sympathetically. In fact, he completely understood the difficult situation McKinley found himself in, having wrestled with similar personal contradictions. The NCAI, for example, prohibited Bennett from holding positions of leadership because his employment in the BIA Division of Program might involve a potential conflict of interest. Yet Bennett had been a founding member of the NCAI and continued to be invested in its activities.

During the course of the previous year Bennett had spent a considerable amount of time on the Uintah and Ouray Reservation, and McKinley had undoubtedly discovered that Bennett had his own ideas about termination policy. Most fundamentally, Bennett believed that the paternal relationships most tribes had with the BIA should be eliminated, and thus he agreed with certain objectives of termination policy. But he also believed that the Indian tribes should determine this course of action for themselves rather than suc-

cumbing to coercive pressures from Congress or the BIA. Bennett also felt strongly that tribes should consent to the process before the bureau could terminate the trust relationship.[71]

The two men shared other similarities as well. Although older than McKinley, Bennett too was a college-educated Indian—a member of the Oneida tribe—and he held a degree from Southeastern University School of Law in Washington DC. Bennett was very familiar with the Utes, having worked for the Indian Service on the Uintah and Ouray Reservation in the 1930s. Finally, Bennett, like McKinley, held a certain contempt for Senator Watkins and his religiously motivated termination agenda. He had worked with Watkins in drafting the Paiute termination legislation, and he knew full well that the Paiutes had not consented to the process. He also knew that Watkins excused this action by assuring other members of Congress that the Mormon Church would take care of the Paiutes.[72]

Bennett understood intuitively that Watkins's motivation for assimilating Indians stemmed from his religious beliefs. In an oral interview conducted in 1993, he asserted unequivocally that Watkins's fervent ideas about termination derived from Mormon theology. Bennett explained the situation to his interviewer by stating that "one of the things that you have when you deal with Indians and Mormons is that we are a factor in their religion. You have the religious aspect of it along with the traditional aspect of the tribe."[73] In fact, Bennett sometimes used his knowledge of Watkins's motives to his own benefit. For example, he once asked his associate John Rainer to visit Watkins's Senate office as part of a lobbying effort for a certain piece of legislation. Rather than simply have Rainer schedule an appointment with the senator, Bennett told him to sit outside Watkins's door and pretend to read a copy of the Book of Mormon. As Rainer later recalled the episode, "Watkins came along and looked at me and asked me what I was reading. I showed him the book. He was really glad. He invited me into his office."[74]

With his intimate knowledge of Watkins's ideology, Bennett had reason to sympathize with McKinley when they encountered each other at the February 1954 NCAI conference. Bennett later reported that McKinley discussed with him possible methods of "settling" the Ute "problem." McKinley's explanation of the situation was

that it grew out of Watkins's threatening 14 February letter to Curry. While a solution remained elusive, apparently the two men shared at least one common objective: to subvert Watkins's termination plan.[75]

To do this, however, Bennett and McKinley had to overcome the probable opposition of Watkins's main facilitator on the reservation, Rex Curry. Ultimately the two men were able to convert Curry to the idea of allowing the full-bloods to "go it alone."[76] Thirty-nine years after the fact, Bennett reminisced that he, McKinley, and Curry held "a meeting out in a bean field . . . [and] decided that we would present a proposal which would terminate all the Mixed-bloods."[77]

The three men drafted an agreement to partition the tribe, and afterward they took it to the Uncompahgre leaders, who gave it an enthusiastic reception. The original resolution called for the division of the Ute tribe into three separate bands and the creation of an additional group for mixed-blood Uintahs. All of these proposals reflected the Uncompahgre perspective on tribal issues. The resolution reiterated the long-standing Uncompahgre contention that the decision to "share and share alike in all assets" (especially the Colorado judgment money) aggravated the differences between the bands and confused their property rights. Since further use of funds depended on the creation of a development plan, the three authors outlined twenty-one provisions for a more equitable program.[78]

The main points of the resolution argued that *ownership* of the Colorado judgment funds be fixed at a ratio of 75 percent for the Uncompahgres to 25 percent for the Whiterivers. Future *use* of the then remaining $10 million in judgment funds would be divided, with seven-sixteenths (43.75 percent) going to the Uncompahgres, four-sixteenths (25 percent) to the Whiterivers, and five-sixteenths (31.25 percent) to the Uintahs. However, since the Uintahs lacked ownership of the money, their proportion would be considered a loan owed to the Uncompahgres—with no interest for ten years. Other points stipulated that fixed boundaries be placed on the reservation to divide the land into separate portions for each band, with an additional one for the mixed-blood Uintahs, and further that the Tribal Business Committee should assist in carrying out these provi-

sions and then be abolished. The resolution also contemplated an association of water users, provided for mixed-band marriages, created a credit program, and more.[79]

At later meetings held to generate input on the proposal, some Whiterivers and full-blood Uintahs expressed concern about dividing the tribe by bands. At Fort Duchesne on 16 March, a Whiteriver Ute named Wallace Jack accused the Uncompahgres of "kicking the Whiterivers out" and leaving them "no place to go." Julius Murray speculated that the Whiterivers would also pull out, leaving the full-blood Uintahs at the mercy of the mixed-bloods. "This is a very dangerous proposition," he said. "It is only the full-blood people who will suffer and the mixed-blood people will take care of themselves."[80]

When Whiteriver and full-blood Uintahs objected to the proposal, McKinley, Bennett, and the Uncompahgre leaders elected to change the method of dividing the tribe from a division of bands to a division between the mixed- and full-bloods.[81] At this point in the negotiations the mixed-bloods demonstrated considerable opposition, the intensity of which alarmed the full-bloods in all three bands and united them behind the proposal.[82]

In many respects, the new proposal to divide tribal assets between the mixed-bloods and the full-bloods represented a real breakthrough for Bennett, McKinley, and Curry because it simultaneously resolved two long-standing problems. First, it eliminated the age-old mixed-blood question, and second, it provided a sudden opportunity to protect the integrity of the tribe by sacrificing the mixed-bloods to Watkins's termination program. In his report to the bureau on 15 April 1954, Bennett suggested the latter point in several significant ways. He argued—quite directly, in fact—that the partitioning process would result in the immediate termination of the mixed-blood Utes. The full-bloods, meanwhile, would then be in position for "intensive work" with the BIA to prepare them for "eventual termination." He also acknowledged that Watkins's 18 February 1954 letter to Rex Curry prompted the crisis in the first place.[83]

It stands to reason that if Bennett and the tribal leaders had actually favored termination, they would not have taken steps to separate the more acculturated members from the rest of the tribe. The

full-blood Utes virtually acknowledged this to be the case in their ten-year development program. This document, written after the division of the tribe, explained that the full-bloods were motivated out of "concern" that Watkins would focus his termination agenda on the Utes primarily *because of* the mixed-bloods' relatively high degree of acculturation.[84] The document also described the aims and accomplishments of the three-year program for "assimilating the Ute Indian into the American culture and society with all the rights, privileges, and responsibilities of the citizenship." The termination of the mixed-bloods, it went on to state, essentially met this objective—a frank admission that more than half of the Uintah band had been sacrificed to meet the terminationist agenda.[85]

Finally, in the aftermath of the tribal partition, the Utes established new objectives, many of which bore no relationship to the goals of the earlier program. Instead of providing for the assimilation of the Utes into American society, for example, the new program listed the need to "safeguard, protect, and perpetuate Indian customs, ceremonies and religious beliefs." Instead of calling for the transfer of bureau programs to the tribe or to state and local governments, it expressed the desire that the federal government provide new "technical and professional service" in meeting tribal problems. Once the mixed-bloods had been cut off, in other words, the tribe no longer felt the pressure to develop a termination program.[86]

Following the formulation of the plan to separate the mixed-bloods from the tribe, Bennett, McKinley, and Curry spent the first few weeks of March 1954 traveling across the reservation and presenting it to several Ute communities. The Uncompahgres at Ouray were the first to hear the proposal, and they received it enthusiastically. John Tabbee expressed the sentiments of most of the full-blood Uncompahgres. After listening to Bennett explain the proposal to divide the tribe, Tabbee stated that Bennett had taken the original arguments of the Uncompahgres and given them "character and substance." Furthermore, he said, the Uncompahgres had "always objected to the unwarranted use of our money without our express consent," and he claimed that the 1950 "share and share alike" agreement had been "obtained from us by duress and failure to present the total picture." Tabbee also added that the Uncompahgres

had not been fully aware, until Bennett pointed it out to them, that the Uintahs "were getting the greater share" of the judgment money.[87]

In directing his comments to the threat of termination posed by Senator Watkins, Tabbee spoke for many when he said, "We highly value our status as Indians. We know we have certain privileges which other people don't have and it would be difficult to surrender them."[88] Also at the Ouray meeting, an influential Uncompahgre leader named Pawwinnee addressed the group and seconded Tabbee's sentiments. He noted, somewhat disingenuously, that the full-bloods had had a basic idea of what to do all along but did not know how to proceed until Bennett arrived with the plan to divide the tribe. "Now," he said, "it is up to us to develop it and give it substance." He also warned that the full-bloods needed to "think about the future instead of how soon they are going to receive money. In planning think about our community and the future of our people. We have the poorest section of the reservation—no excuse for people who are supposed to have money."[89]

During these meetings the Uncompahgre and Whiteriver full-bloods continually expressed their opinion that the mixed-blood problem was a "Uintah problem" and that the Uintah full-bloods should "take action" against the mixed-bloods since they were the ones who let them into the tribe in the first place.[90] Uncompahgre feeling against the mixed-bloods ran especially high. At the Randlett meeting on 9 March, Pawwinnee charged that the mixed-bloods had taken over the programming before the Uncompahgres could get involved. Afterward, he said, "they tried to tell us what to do." John Tabbee added that the experiment of the three-year program had not worked and that the old "problems and feelings" remained—chiefly those related to the mixed-bloods. Tabbee also defended the nonparticipation of the Uncompahgres by contending that the Uncompahgres never agreed to share with the mixed-bloods "to start with."[91]

Bennett, McKinley, and Curry received a considerably cooler reception in the predominantly mixed-blood communities to the north. Bennett's official report of 15 April 1954 gave a good chronology of the several meetings that took place in March when he and the others presented the plan to the tribe. On 8 March he noted that

the three of them came under "violent personal attack" from mixed-blood spectators at the Tribal Business Committee meeting. On 11 March, more resistance developed in a meeting held at Fort Duchesne when the mixed-bloods attempted to have McKinley fired. Bennett later recalled that when the three leaders first presented the plan to the mixed-bloods, the meetings became quite "ugly" and featured a lot of name-calling. He reminisced that on one occasion he sat between Curry and McKinley and literally held onto their coattails so that when they were insulted they could not jump up and respond.[92]

When Bennett left the reservation for ten days in mid-March, considerably more contention erupted as the mixed-bloods threatened lawsuits and "other actions" against the rest of the tribe. Bennett characterized the mixed-blood antagonism as personal and not directed against the merits of the plan.[93] He had good reason to characterize the opposition this way, because it deflected the criticism away from the partitioning proposal. In fact, however, the mixed-bloods had several reasons to object to the proposal. Albert H. Harris, a BIA employee and mixed-blood Uintah of Ute-Shoshone descent, offered some of them in his comments at the Fort Duchesne meeting. He argued that splitting the tribe would result in many committees "instead of one" and that it would bring "earlier taxation." He felt that the tribe needed more time to consider the issues, especially since, given the terminationist mood of Congress, if they were all going to be terminated it would be easier to divide assets *after* the fact.[94]

In making this point Harris unwittingly touched the heart of the issue. He could not grasp, at that time, the real reason why Bennett, McKinley, and Curry wanted to partition the tribe: to protect the full-bloods from termination by sacrificing the mixed-blood Uintah population. Harris simply felt that the Uncompahgres did not participate in the planning effort because they first wanted to know how it would affect them. He also noted that Bennett had not met with the Planning Board in formulating his proposal. In fact, many of the mixed-bloods felt that the entire process had bypassed the elected representatives of the Planning Board and, by extension, the majority of the Ute people. Following Harris's remarks, Elizabeth Bumgarner asked those assembled how McKinley could "use tribal

money to take up business he was not authorized to do." She pointed out that the Uncompahgres were the real minority group. Lula H. Murdock also reminded the audience that the Uncompahgres had "agreed to share and share alike." Now, she said, it seemed like they were "trying to back out."[95]

Harris and Bumgarner had correctly accused Bennett and McKinley of bypassing the tribe's elected representatives. What they did not know is that the two had also superseded the established programming criteria of the BIA, at least those established to comply with House Joint Resolution 698. Up to this point, Bennett had not even told his superiors at the bureau what he and McKinley had in mind. On 11 March he finally telephoned Homer B. Jenkins in the Division of Program office and informed him that the "Ute Tribe [had] been trying to change the direction of the planning from a terminal program," carefully omitting mention of his own role. Without providing any of the details of the partitioning scheme, he told Jenkins that the tribe would be holding a series of meetings in the coming week and that he hoped to use these meetings to "do some good." He then added that he had "already talked with the members of the Planning Committee [Board]" and believed that he had "them headed in the right direction." He did not say what direction that would likely be.[96]

As noted earlier, Bennett then left the reservation at mid-month and traveled to Ignacio, Colorado, to confer with leaders of the Ute Mountain tribe on unrelated business. He returned to Uintah and Ouray in time to prepare for the pivotal 31 March 1954 General Council meeting, at which the tribe would vote on the proposal. Meanwhile, the members of the Tribal Planning Board were hardly heading in the direction Bennett hoped they would go. The board, an elected body controlled by Curry and the Tribal Business Committee, had the responsibility of drafting a long-range "rehabilitation" program to comply with Senator Watkins's ninety-day deadline—an effort Curry undoubtedly spearheaded since he had the most experience in working with the senator. But the committee members resented the fact that Bennett had bypassed them with his proposal to divide the tribe. Several members objected to Bennett's intervention, and they used the occasion of his absence to try to stop him.

On 18 March the Planning Board sent the following telegram to Senator Watkins, warning him of the danger to the programming effort:

> Because of the opposition from a minority group of Uncompahgres, regarding Ute Long Range Program, Indian Office Representative [Bennett] has presented another program for dividing Ute tribe into separate Bands. This action has disrupted elected Tribal Planning Board, and as a result, progress has been stopped. Grave concern among many members of all Bands regarding new proposal, which is being offered without legal advice, as far as we know. As per your request in letter dated February 18th, 1954, your assistance and advice is urgently needed in order to comply with your ninety day requirement for submitting Ute Program. Please advise.[97]

Unfortunately for the Planning Board, the protest came too late to alter the situation. Whether Watkins responded to the telegram is unknown, but later events demonstrated that even if he had, his answer would not have been reassuring: the sudden prospect of immediately terminating part of the tribe appealed to him very much. Consequently, Watkins championed the division of the Ute tribe as a step in the right direction.

Following his return to the reservation, Bennett continued to work with McKinley and Curry to refine the resolution for presentation to the tribe at the General Council meeting scheduled for 31 March 1954. The language and provisions were straightforward—it simply called for the division of the tribal assets between the full-blood and mixed-blood groups. Mixed-blood members were defined as those having less than one-half Ute Indian blood, and both groups would exercise jurisdiction and control of their own people and property.[98] The resolution also contained an interesting proposal for the creation of a committee to draw up partitioning plans. Bennett and his confederates anticipated mixed-blood opposition—the proposed committee would consist of a majority of full-blood members (six to three over the mixed-bloods). Also, the plans created by the new committee would require the approval of the Tribal Business Committee. In other words, the resolution made it clear that the partitioning of the tribe would be controlled by the

full-bloods and that the mixed-bloods would have input into the process, nothing more.[99]

With the main features of the plan essentially resolved, Bennett, McKinley, and Curry still needed the endorsement of tribal attorney John Boyden and claims attorney Ernest Wilkinson. Boyden had not been a party to the partitioning effort as yet, and when he learned of the rationale behind the proposal he became rather angry. He particularly resented the Uncompahgre accusation that he and Wilkinson had steamrolled the tribe into sharing the Colorado judgment money in the first place. As he put it in a letter to Ernest Wilkinson:

> Yesterday I attended a meeting at Fort Duchesne concerning the new development program that must be presented to Congress. Francis McKinley made several statements that were very disturbing to me with reference to the way in which we settled the claims between the various bands. They now propose to open up the whole matter and require a general accounting, redistributing the funds in accordance with the equities of the various bands. You and I know of the many legal difficulties with respect to this, particularly in view of the fact that the compromise has been reached and the agreement confirmed by Congress, but I think the next time you are in Salt Lake we should discuss this matter in the reasonably near future.[100]

A few weeks later Curry sent Boyden a copy of the proposed resolution and notified him of the upcoming General Council meeting at which the new partitioning program would be formally presented. Boyden relayed the news to Wilkinson and extended an invitation to Wilkinson to attend, noting that it would be "a very crucial meeting with reference to the Tribe's planning." He also took the opportunity to inform Wilkinson that he had learned that "we are being accused of forcing the Indians to agree to the equal sharing of the claims money."[101]

Wilkinson, like Boyden, had not been involved in the partitioning process. However, Boyden, Bennett, and the tribal leaders asked him to present the partitioning resolution to the General Council meeting on 31 March 1954 because he was perceived as a "neutral person."[102] In fact, by 1954 Wilkinson had little to do with the Utes other than overseeing the Wilkinson, Cragun and Barker

litigation of cases before the Indian Claims Commission. His responsibilities at Brigham Young University generally kept him preoccupied. For example, in January, in response to a BIA Field Service request that he give a radio address to the Utes on the progress of their pending cases, he had to ask Carl Hawkins (a partner in the firm) to "dictate about a 15 minute address that would be satisfactory for me to give." The resulting speech dealt entirely with the status of pending ICC cases, especially the Uintah Utes' Spanish Fork claim.[103]

Consequently, by March 1954 Wilkinson truly was a "neutral person" in one important respect: he had not been actively involved in the decision to divide the tribe. In fact, as he learned more about the proposal he developed serious reservations about it. From his detached perspective he could already see potential disaster for the mixed-bloods. Nevertheless, he accepted Boyden's invitation to attend the 31 March General Council meeting and serve as spokesman for the resolution to divide the tribe. The situation must have reminded him in many ways of the General Council meeting he presided over back in May 1950, when he stunned the full-blood Colorado Utes with his proposal requiring the two Colorado bands to share their judgment funds with the largely mixed-blood Uintah Utes. Now, nearly four years later, with Wilkinson once more presiding, the full-bloods were about to turn the tables on their mixed-blood kin.

6 THE BUREAUCRATIC SOLUTION

In the early spring of 1954, Robert Bennett's proposal to divide the membership and assets of the Ute tribe had attracted the support of many on the reservation and in Washington. In fact, this process, known in BIA terminology as "partitioning," became a kind of bureaucratic cipher for whatever the various interests wanted it to be. To Senator Watkins and his collaborators in the bureau and the tribe, the partitioning process served as a legislative mechanism for terminating as many Utes as possible. To the mixed-blood Utes, it became a method for gaining their share of the tribal assets to pay off personal and tribal debts, many of which had been contracted as a part of the three-year program. For the less acculturated full-blood members of the tribe, it solved a host of ills by protecting tribal assets, providing much-needed per capita funds, settling old grievances against the mostly mixed-blood Uintahs, and, most importantly, shielding the tribe from the senator's termination program.

The situation came to a climax at a tribal General Council meeting on 31 March 1954. What actually took place is a matter of considerable controversy, though it is known that Robert Bennett, Ernest Wilkinson, and John Boyden were in attendance and that Wilkinson presented the prepared resolution calling for the division of the tribe and the termination of members having less than 50 percent Ute Indian ancestry.

The meeting had been orchestrated well in advance. Attorneys Ernest Wilkinson and John Boyden, along with Area Director L. L. Nelson and bureau employees Robert Bennett, Francis McKinley, and Rex Curry, met in the morning before the General Council meeting to discuss the proposed resolution and how to best present it to the tribe. In fact, Wilkinson, Boyden, and Nelson had plenty of time to discuss the probable course of action, since the three traveled from Salt Lake City to Fort Duchesne in Wilkinson's car.[1]

According to Bennett's official version of the meeting, the Utes received the proposal calmly and accepted it without serious opposition. Bennett took pains to note that a mixed-blood Ute motioned the proposed resolution and another seconded it.[2] Unofficial versions of the meeting, however, tell a far different story. According to Tribal Planning Board chairman Waubin Waunzitz, who presided over the meeting, the assembled Utes waited about a half an hour for Wilkinson and his associates without knowing why they were coming. Finally, the attorneys arrived and took control. Wilkinson explained that he had a resolution he wanted the Utes to pass, claiming that it would be in the best interest of the tribe. Waunzitz provided a translator and allowed Wilkinson to read it, but the assembly was taken completely off guard by his surprise move and received the resolution in silence. No one offered a motion or said anything. Superintendent Gilmore and Rex Curry urged discussion, but the silence continued. Finally, tribal member Charlie Atwyne said, "We would like to discuss this some more another time." As the elected chair of the meeting, Waunzitz felt that Wilkinson was out of order, since his proposal had not been placed on the agenda, but he deferred to the tribal leadership.[3]

Other accounts suggest that a large number of Uintah Utes walked out of the meeting at this point, since they were unprepared for Wilkinson's intrusion and had no answer for it. What happened next certainly suggests that very few of the mixed-bloods remained or were ever present. In the ensuing confusion someone in the crowd called for a vote, and Curry seized the opportunity, saying, "Okay, now, this is the time when you folks are going to get rid of the Mixed-bloods. We're getting rid of all of them down in here," gesturing to his heart and his head. Waunzitz asked the members if they were ready to vote, and they said, "We're ready." Then he said, "All

those in favor of this resolution of what Wilkinson has read," and all the hands went up. Waunzitz later claimed that some of the full-bloods even put two hands up because they were so "glad to get rid of the half-breeds."[4] The measure must have generated some opposition, however, since Bennett reported that 152 Indians voted in favor of the resolution and 8 voted against it. But regardless of the overwhelming vote, the fact remains that few if any of the Utes really knew what they were voting for. Wilkinson's resolution had taken them by surprise, and they had not been given sufficient time to consider the ramifications. Most importantly, the vast majority of those destined to be terminated by the proposal never had any say in the matter.

Mac Murdock Sr., who claims to have been one of the eight voting in opposition to the motion, felt that the outcome was inevitable because of the composition of the voters. By his count, only 21 mixed-bloods were in attendance, whereas at least 265 full-bloods had voted in favor of the motion "when they stopped counting."[5]

Preston V. Allen, an important mixed-blood leader in the events that followed, believed that Wilkinson and Boyden had carefully orchestrated the 31 March meeting to ensure a successful vote to divide the tribe. In a sworn deposition, Allen contended that the mixed-blood issue pitted the full-blood Uncompahgres and Whiteriver Utes against the Uintahs, since the vast majority of the mixed-bloods derived from the latter band. In order to get around the expected Uintah opposition, the sponsors crafted the resolution so that only those with less than one-half Ute ancestry would be subject to termination, presumably inducing those with one-half or more Ute ancestry to vote with the full-bloods. Allen believed that the vote of these "half-breeds," as he called them, turned the meeting against those of lesser degrees of Ute ancestry.[6]

The resolution clearly reflected the sentiments of the full-blood Utes with regard to termination. It simply called for a division of assets between "those Indians possessing ½ or more Ute Indian blood . . . and those Indians possessing less that ½ Ute Indian blood." The resolution went on to declare that each group would have "full political jurisdiction and responsibility" over its own membership and property. Finally, in order to guarantee control by the full-bloods, the resolution called for the creation of a nine-

member committee—six full-bloods and three mixed-bloods—to oversee the partitioning process.[7]

Bennett's superiors in the BIA Division of Program quickly embraced his solution to the Ute "problem." Homer Jenkins's letter to Commissioner Emmons provided the specifics of the 31 March resolution and defended Bennett's actions. According to Jenkins, the whole thing was done to resolve the conflict between the mixed- and full-blood Utes; he even went so far as to contend that the issue was "one of long standing on the reservation." Jenkins offered the usual arguments about the mixed-bloods being the primary beneficiaries of tribal funds, and he added information about the Duchesne County commissioners' attempt to assess taxes on the property of the mixed-bloods. More importantly, Jenkins echoed Bennett's sentiments in proclaiming the mixed-blood group ready for termination. He also cited the standard bureau contention that the full-bloods would require considerable preparation.[8]

In the aftermath of the 31 March meeting, the Ute tribal leaders continued to meet periodically with their attorney, John Boyden, who took up the task of transforming the resolution into a legislative proposal. Senator Watkins rendered as much assistance as he could, even visiting Fort Duchesne on one occasion to work with Boyden. In an attempt to move the legislative process along as quickly as possible, Watkins arranged for one day of hearings on the proposal, even though Boyden had not yet completed the bill.

The hearings took place on 23 April at Fort Duchesne. Watkins did not attend, but he left one of his legislative assistants, Garth Jax, to preside over the sparsely attended sessions. Although the surviving transcripts are of poor quality, they generally demonstrate that only a few Utes participated in the hearings and that those who did attend had a very limited understanding of the partitioning process. A mixed-blood Ute identified as "Hugh Sesswich" (the names in the transcripts were invariably recorded incorrectly) offered fairly typical testimony. He asked Jax, "By full bloods and mixed bloods, what do you mean?" Then he continued, "There are a lot of Indians that are mixed with a lot of [other] Indians here on the reservations. . . . I can't figure out what it means to be full blood." Another Ute, identified only as "Charlie," pointed out that the Utes "didn't really understand" the resolution when they voted on it. "They didn't know

what it meant," he argued.[9] In the afternoon session, a Ute identified as "Mr. Whitman" contended that the Utes passed the resolution only because they were told that Congress wanted to "get rid of the Indian Department as soon as possible. . . . That is the reason we took up this resolution and acted on it. We were led to believe by Mr. [Boyden] and Mr. Wilson [Wilkinson] that we had to get this done in a hurry because they were going to get rid of us in a hurry."[10]

Many who offered testimony spoke in favor of the proposed division of the tribe, although few understood the significance of what had been proposed. Those who did, particularly Boyden and Albert Harris, one of the leaders of the mixed-blood faction, offered extensive testimony on the benefits the proposal would offer the Utes. More significant testimony came from influential Utes who had not yet decided how they felt about it. Oran Curry, Rex Curry's father (identified in the transcript as "Oren Perry"), offered the following assessment: "I would not be in position to say one way or other at this time until I hear both sides. I haven't decided whether I will go along with the mixed blood or with the whole blood. I am here to listen."[11]

While Watkins fulfilled the letter of the law by conducting hearings, Boyden, working closely with Watkins's staff, finished drafting the legislation in mid-May. He then sent a copy to Ernest Wilkinson, informing him that the draft followed the "general line of the Resolution" passed by the Utes at the 31 March General Council meeting. Boyden asked Wilkinson to quickly review the document and offer his comments, as he wanted to have it introduced in Congress that same week.[12]

Wilkinson cheerfully obliged, and he congratulated Boyden on the extensive amount of work that went into producing his legislative "*magnum opus*," as he called it. But Wilkinson also excused himself for not having time to examine the legislation as carefully as he would have liked due to the press of his university responsibilities. Nonetheless, he recommended several technical changes and warned Boyden of what he perceived to be the bill's greatest shortcoming. Pointing to the section dealing with the status and organization of the mixed-bloods after the division of the tribe, he expressed his "very definite feeling that it will result in the quick dissipation of the assets of the mixed bloods but I am afraid that is

inevitable. . . . My main concern as I have indicated above is as to what happens to the mixed bloods. They should be fully protected."[13]

Wilkinson also expressed his belief that Boyden would continue to represent the full-blood Utes, and he asked Boyden if he knew who would represent the mixed-bloods. Pointing to the obvious conflict of interest, he noted that "it would be rather impossible to represent both."[14] In fact, Wilkinson saw the division of the Ute tribe as an opportunity for his own firm to represent the mixed-bloods. Writing on the same day, he asked his brother Glen to discuss with the firm's partners the possibility of representing the mixed-blood group. The legislation would require seven years for the division of the assets, he explained, during which time the mixed-bloods would require counsel. "Should we represent them," he continued, "it would probably mean that we would have to dissolve the fictional partnership which we have with John Boyden at the present time."[15]

The question of legal representation for the mixed-blood Utes would eventually prove to be critical to the partitioning process. In May 1954, however, bureau officials Homer Jenkins (head of the Division of Program) and Robert Bennett found themselves in the dark about Boyden and his potential conflict of interest. Incredibly, the bureau did not even know that Boyden had been working with Watkins to draft the necessary legislation.

In the meantime, Bennett, who understood the situation on the reservation better than most, feared that in his absence the mixed-blood members might be organizing to subvert the partitioning plan. A telegram from the Phoenix Area Office in early May 1954 did little to reassure him. The telegram discussed the long-range planning for the full-blood Utes, which elicited an immediate long-distance call from Bennett and Jenkins to Area Director Ralph Gelvin. They wanted to know if anything had changed—that is, if the full-bloods still supported the partitioning concept. Gelvin assured them that all was in order and that the full-blood Utes were in the process of drafting a new "rehabilitation" plan.[16]

Still worried about the fragile situation on the reservation, Bennett and Jenkins decided that it would be better to have delegations from both Ute groups work out the details of the partitioning plan in Washington, where they could be closely supervised.[17] In reality,

the two officials had little reason to worry about the situation on the reservation because of Boyden's newly formed commitment to the partitioning process. At the time, however, the BIA officials took solace in the fact that Superintendent Gilmore strongly supported Bennett's plan. Gilmore felt that Bennett's partitioning program effectively removed the barriers to Ute termination. He believed that after the division of assets and the termination of the mixed-bloods, the BIA would be in a position to "carry on a constructive program with the Full-bloods, leading to a terminal program for them" as well.[18]

Boyden and Gilmore used their considerable influence to control events on the reservation at this critical juncture. Boyden seems to have realized how important Gilmore's contribution could be to the upcoming planning sessions in Washington, for he wrote to Commissioner Emmons and insisted that Gilmore be allowed to accompany the Ute delegations. He argued that the "matters to be considered are of grave importance," implying that the termination plans might be jeopardized should Gilmore not be permitted to come.[19] Jenkins readily approved the request. He was aware that Gilmore strongly supported the partitioning effort and was happy to have Gilmore's assistance.[20]

In early June the tribe sent a delegation to Washington to offer testimony on the proposed legislation. The Tribal Business Committee took the lead in selecting the members of the delegation, a tactic that produced a great deal of controversy later on. At the time, however, Boyden, Watkins, and the bureau all wanted the Ute testimony to be carefully orchestrated in favor of the legislation, so Gilmore, Boyden, Curry, and a few tribal leaders (Albert Harris, Conner Chapoose, and Russell Cuch) who had fallen under Watkins's influence were selected. Before the hearings began they met with the senator in his office and informed him that the tribe had voted for a separation of assets between the mixed-blood Utes and the full-bloods. Watkins congratulated the delegates and announced that their proposals had already been embodied in a termination bill that he would shortly introduce in Congress. Since Watkins eagerly wanted some kind of termination for the Utes, he was all too happy to take advantage of the vote by proposing legislation.[21]

Actually, Watkins had already spent a considerable amount of

time working with Boyden on the draft legislation, and the two men had reached agreement on the most important issues.[22] Watkins saw the partitioning process as an opportunity to terminate the mixed-blood Utes immediately, with the rest to follow in due course. As events would shortly demonstrate, his negotiations with Boyden over the features of the bill resulted in a legislative formula that would terminate the largest possible number of mixed-bloods.

A joint hearing was subsequently held in June on the proposed legislation, and the carefully chosen delegation of tribal members and government officials offered testimony. Not surprisingly, all of the witnesses gave favorable testimony to the proposed legislation, as none of the mixed-blood Utes opposed to the plan were invited to attend or offer their views. Even so, the proposal contained one rather stunning alteration crafted by Watkins and his small coterie of allies in the BIA and the tribe. Instead of terminating anyone with *less* than 50 percent Ute Indian blood, the language of the pending legislation had been changed to terminate anyone who did not have *more* than 50 percent Ute Indian blood. Boyden, who wrote the bill, inserted the change into the legislative draft used by the congressmen at the hearing.[23]

In his testimony before the joint committee, Curry further modified this proposal by suggesting that full-blood membership be restricted to those who "possess one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed bloods by choice under the provisions of section 4 hereof." Closely questioned by Watkins, Curry explained that his definition would clarify the status of those with Indian blood of other tribes and would even allow full-bloods to join the mixed-blood group if they so desired.[24]

Watkins promptly inserted the change into the bill and included Curry's version in the bill submitted to Congress. The "more than" 50 percent ancestry requirement immediately added 10 percent of the Uintah Utes to the mixed-blood rolls; it also provided for the eventual termination of other tribal members, since the children of anyone who married a non-Indian would be automatically disinherited. Watkins realized that such a stringent provision on tribal membership would be very restrictive. The possibility existed that the Utes could be defined out of existence by a bureaucratic formula.[25]

Boyden later made the interesting point that during the course of the hearings in Washington "one of the several compromises reached with the department and with representatives of Congress [the BIA and Watkins] related to the definition of 'full-blood.'" He clearly stated that "the tribe had proposed that all members possessing one-half degree of Ute Indian blood should be termed full-blood members." But this was changed to a "compromise" definition of one-half Ute and more than one-half Indian, as stipulated in the bill. He did *not* elaborate on how or why this occurred, but he did indicate that it was a *matter of negotiation* between the tribe (probably Boyden and Curry), the BIA, and Watkins.[26]

In fact, a letter from Boyden to Ernest Wilkinson supports this interpretation. Boyden informed the claims attorney that "a new definition of 'mixed-blood' and 'full-blood' has grown out of our discussions at Washington." He continued, "We have proposed still a further change, and I confidently expect it will be adopted." He then explained the new definition as follows:

> "Full-blood" means a member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed-bloods by choice under the provisions of section 4 hereof.
>
> "Mixed-blood" means a member of the tribe who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined, and those who become mixed-bloods by choice under the provisions of section 4 hereof.[27]

Boyden added: "Our proposals were met with enthusiastic approval and you will see from the Committee print, which represents an agreed statement with the Senator and with the Department of the Interior, that the bill is left substantially as drawn."[28]

Curry and the other Ute delegates to the hearings in Washington DC reported that the increase in blood quantum for tribal membership came at the insistence of Interior Department officials Rex Lee and Orme Lewis so that the bill would establish a stronger precedent for termination.[29] The fact that these men—particularly Lee—were closely associated with Watkins leaves little doubt as to who really authored the new provision. Watkins wanted the Ute legislation to set an example for other tribes, so he likely agreed to sup-

port the partitioning resolution on the condition that the language be more inclusive in terms of terminating the largest possible number of Indians. He undoubtedly pressed his allies in the Interior Department to insist upon it. Boyden, working on the tribal level, then induced Curry and McKinley to change the tribal membership definition.

It must be noted that in making this change in the legislative proposal, Watkins and his accomplices exceeded the stipulations of the tribal resolution passed on 31 March. Once again Watkins's actions demonstrated his contempt for the will of the Indian populations targeted for termination. Boyden, Bennett, and others involved in the arrangement could not have been surprised by his actions, since virtually every prior step in the partitioning process had been conducted in an illegal fashion. The decision to divide the tribe had in itself been conceived by individuals working outside the legitimate planning boards elected by the tribe. The tribal resolution approving the resolution had been presented to the tribe in an extralegal way, without notification or time sufficient for deliberation. Most importantly, the critically important consent principle had been violated, since the mixed-bloods never had the opportunity to approve or deny the termination process. The vote had been taken at a meeting which the vast majority of them did not attend.

In a letter written much later to Curry, Boyden rationalized these maneuvers by emphasizing the *intent* of the resolution presented to the General Council meeting on 31 March. The idea, he noted, was to terminate the mixed-bloods at an early date "and thus leave the remainder of the tribal membership in a position to proceed with their tribal government as in the past, but pursuant to a development program . . . with a view of eventually terminating all federal supervision over the tribe and its members." He then offered a key piece of evidence concerning the deal that he and the others made: "It was agreed by Senator Watkins that if the mixed-bloods were terminated within the near future, no definite date of termination for the full-bloods would be required, but that such termination of the full-bloods would depend upon the success of the development program and other factors."[30]

Watkins, it seems, could wait for the rest of the tribe as long as he could use the mixed-bloods as examples of his termination pro-

gram. In fact, he said as much during the hearings. His comments came in response to those offered by Congressman E. Y. Berry of South Dakota after listening to Curry present the outline of the partitioning plan. Berry offered his view that the Ute program signaled the "dawn of a new day," to which Watkins responded, "It will certainly be a model or pilot program that might help a lot of other reservations."[31] Curry and the Ute delegates understood this as well. In attempting to explain the inclusion of the Utes of one-half blood with the terminated group to the rest of the tribe, they noted that the "Ute Bill is being considered as legislation which will form the pattern for other bills introduced by Indians throughout the United States."[32]

As events later developed, this administrative alteration of the blood quantum formula generated a number of unforeseen consequences. In early 1956, for example, the BIA interpreted the language of the Partition Act in a way that would have effectively terminated the children of full-blood members, and consequently lead, with the passing of the current generation, to the termination of all of the Utes. In a legal opinion rendered by BIA associate solicitor W. H. Flanery, the bureau contended that the Partition Act divided the assets between full- and mixed-blood Utes only and that these rights to the assets of the tribe were not inheritable. The only members of the Ute tribe, therefore, were those expressly listed on the rolls of the Partition Act. Flanery also concluded that no persons born after the date of the act could qualify as full-blood Utes. As he put it, "subsequently born children have no rights to the assets of the tribe except such rights as may be extended to them under the development program."[33]

Flanery's opinion also argued that the asset rights of mixed-blood Utes, on the other hand, were inheritable—presumably because they belonged to individuals and not to the tribe. Flanery had already corresponded with Senator Watkins about his decision, a fact which suggests that Watkins at least had questions about the inheritance rights of Ute heirs. Of course, it may have also been the case that Flanery rendered his rather extraordinary interpretation of the act at Watkins's urging.

A related opinion from the Solicitor's Office (opinion M-36304) stipulated that "the determination of the full-blood membership of

the Ute Tribe . . . for the purpose of participating in the development program . . . is controlled by the provisions of the Act [P.L. 671] and not by the constitution and bylaws of the Ute Indian Tribe." This opinion "froze" the full-blood rolls and prevented children born to the full-blood members from "participating in the program."[34] Boyden and the full-blood leadership "violently disagreed with this conclusion" and lobbied for a new, clarifying piece of legislation to amend the offending sections of the Ute Partition Act (P.L. 671). Consequently, Congress passed the amending legislation (P.L. 920) in the Eighty-fourth Congress. It amended sections 5 and 8 of the original act so as to *disallow* individual full-bloods from inheriting tribal assets (so that they would be retained by the tribe as a whole) and to "unfreeze" the tribal rolls by allowing future membership after 27 August 1954 (the date of P.L. 671) "in a manner provided in the constitution, bylaws and ordinances of the tribe."[35]

But this too proved to be a miscalculation, because the tribal ordinances still defined tribal members as those possessing *one-half or more* Ute blood. Suddenly, the half-blood Uintahs were again eligible for membership in the tribe! Boyden reacted to the new predicament by recommending a series of ordinances for adoption by the Tribal Business Committee to clarify the situation. He insisted that the new membership ordinances follow the definitions stated in the Partition Act, as a matter of "right and justice." To admit persons of one-half degree because of "legal niceties," he contended, would "do violence to the purposes of the Act" (meaning P.L. 671) and be "unfair." But he did not address the question of fairness from the perspective of the mixed-bloods.[36]

The first of these proposed ordinances stipulated that "all members subsequent to August 27, 1954 . . . must possess at least one-half Ute Indian blood and Indian blood in excess of one-half." Boyden proposed this ordinance in the spring of 1957 in an apparent attempt to sweep aside "legal niceties" prohibiting ex post facto laws. The other proposals dealt with the membership status of illegitimate children, women living in common-law relationships, and so on.

After the hearings and subsequent revisions to the language of the partitioning legislation, Watkins ushered the Partition Act through a receptive Congress which passed it without objection in late July

1954. For the full-blood and mixed-blood Utes, however, the summer of 1954 became a season of turmoil. Even as the legislative process unfolded, the two groups began debating separate plans for an uncertain future.

In June, while the Senate considered the Partition Act, a group of Uintah Utes contacted attorney Ray E. Dillman of Roosevelt, Utah, to voice their concerns about the legislation. The very fact that these Uintahs, many of whom were mixed-bloods, decided to consult with an outside attorney signaled their growing disenchantment with Boyden. Dillman transmitted the concerns of the mixed-blood Uintahs to the commissioner of Indian Affairs, noting that the Uintahs objected to the rigid criteria for determining the status of mixed- and full-blood Indians and, in particular, felt that they should have a greater voice in determining the fate of those of one-half Ute blood. The Uintahs pointed out, for example, that some of their number were full-blooded Utes married to members of other tribes (most typically Navajos). According to the terms of the legislation, their children would be classified with the mixed-blood group and terminated, despite the fact that they had "no interest or business with the Mixed-blood." The Uintahs felt that the half-blood members of mostly full-blood families should at very least have the option of joining the full-blood group.[37]

Acting Commissioner Greenwood rejected out of hand the suggestion that Utes of one-half blood be given the opportunity to be classed with the full-bloods. His response to Dillman offered a rather sweeping declaration of the bill's true intent. As he put it, the "recommendation would permit mixed-bloods the right to defer indefinitely the termination of Federal supervision; whereas, the intent of the legislation is to effect such termination." Greenwood twice informed Dillman that the full-blood definition used in the legislation had been proposed by the Indians themselves—an assertion that was patently false.[38] The definition of tribal membership that Senator Watkins's committee had inserted into the Partition Act had been proposed by Boyden and Curry, and then only as the result of secret negotiations with Watkins's allies in the Interior Department. It certainly did not reflect the will of the tribe—even as expressed in the controversial Ute resolution of 31 March 1954.

Meanwhile, Dillman's intrusion into the process raised serious

questions about the mixed-blood Utes' need for independent counsel. As Ernest Wilkinson had noted earlier, the division of the tribal assets would take seven years, and the mixed-bloods would have to have counsel to protect their interests.[39] In June 1954, the same month that some of the Uintahs contacted Dillman, Boyden notified the Wilkinson law firm that he would continue to represent both the mixed-blood *and* the full-blood tribal groups—an obvious conflict of interest. Yet Boyden justified this course of action by claiming that expediency demanded it. As he explained the situation to Glen Wilkinson, the mixed-bloods asked him to continue with representation of them as well as the full-bloods because they felt that his knowledge of their problems made it "inadvisable for them to hire another attorney at this time."[40]

In passing Boyden's decision on to his brother, the younger Wilkinson dryly noted that Boyden operated "on the theory it would take another attorney a considerable period of time to become acquainted with their problems."[41] But such a rationalization could hardly have impressed Ernest Wilkinson, who knew more about the Utes and their legal problems than anyone, excepting perhaps Boyden himself—and Wilkinson had already entertained the idea of representing the mixed-bloods.

As a method of avoiding the inevitable conflict of interest, Boyden informed the Wilkinsons that he had agreed to represent both parties only on the understanding that if a conflict should develop he would then "step out from representation of the mixed bloods."[42] Boyden seems not to have understood—or at least not to have been overly concerned by the fact—that the entire process of dividing tribal assets presented exactly that type of conflict.

Wilkinson's views on the issue must have mattered to Boyden, if only because at the time Boyden was still technically affiliated with the Wilkinson, Cragun and Barker law firm. Wilkinson, however, wanted to dissolve this "fictional" relationship. In early 1955 he met with the partners of the Washington firm to discuss the desirability of maintaining an affiliation with Boyden. He told his partners that he did not like the way Boyden worked alone and refused to "play on the team," and he argued that Boyden should either return as a partner in the firm or dissolve his relationship with it. Wilkinson clearly preferred the latter option.[43]

Unfortunately, the mixed-blood Utes knew nothing of Boyden's conflict of interest. Except for their brief flirtation with Dillman in 1954, it probably never occurred to them that they needed independent counsel—at least not before Congress passed the Ute Partition Act. Until that time they still saw themselves as members of the Ute tribe and capably represented by Boyden. As the provisions of the act took effect, however, especially the division of tribal assets, the mixed-bloods' need for independent counsel became more apparent. Part of the problem was that the mixed-bloods—unlike the Ute tribe, which continued under its established constitution—had no formal organization. Throughout the remainder of 1954 and all of 1955, the mixed-bloods worked with Boyden on an ad hoc basis to develop plans for distributing their share of the tribal assets. Using the authority of the Partition Act, Boyden envisioned a program for the mixed-bloods wherein their assets and organization would be linked in a program of corporate ownership. Members of the mixed-blood group would become shareholders, while the business activities of the group would fall under the aegis of a board of directors.

By the early spring of 1956, Boyden and an informal group of influential mixed-blood representatives completed work on a proposed constitution and bylaws. Following the approval of the commissioner of Indian Affairs, the mixed-bloods held an election on 12 May and approved the new plan by a vote of 128 to 6. With the ratification of the constitution and bylaws, the mixed-blood Utes officially became the Affiliated Ute Citizens of the State of Utah (AUC).[44]

A key provision of the Affiliated Ute Citizens' constitution and bylaws required the Board of Directors to employ legal counsel. Thus, more than two years after the decision to divide the tribe and partition the assets, and after the creation of a plan to form an organization and distribute assets, the issue of legal representation finally came before the mixed-blood membership. By that time their fate had been cast. Boyden, after all, had been involved from the beginning. He had drafted the Partition Act and crafted the constitution and bylaws of the AUC. As subsequent events soon demonstrated, most of the critical decisions had already been made for them.

The majority of the mixed-blood Utes never really understood the need for independent counsel, especially during the two-year pe-

riod between the decision to partition the tribe and the creation of the AUC. In fact, most of the AUC Board of Directors still had not firmly grasped the concept when they finally turned to the matter of hiring counsel in July 1956. The minutes of this meeting reveal that only a few of those present understood that it would be a conflict of interest for Boyden to continue representing both the Ute tribe and the AUC. One of these was a mixed-blood Ute named Arthur Workman, who pointed out that since Boyden had been rehired by the full-bloods, "he could not represent both the Full-blood group and the Mixed-blood group." Another mixed-blood, Margaret Phillipps, asserted that "he could be disbarred if he attempted to do so."[45]

Still, the mixed-bloods knew Boyden and most of them thought well of him. Sarah Hackford argued that the group should rehire Boyden, since he was "well acquainted with our affairs and could go on without any study." Della Curry made the final, decisive comment by pointing out that if Boyden could work for the full-bloods, "where were we any different?" She said that he was a good man and had done many good things for the tribe. Afterward, a proposal that Boyden be retained for a period of one year passed by a vote of thirty-six to twelve.[46]

One might wonder why the BIA did not step in and protect the rights of the mixed-bloods to have legal representation during the course of the termination proceedings. The answer is relatively simple: it was not in the bureau's interest to do so. At the beginning of the partitioning process, the bureau only sought to terminate the mixed-bloods; providing them with independent counsel might well have impeded or even prevented the realization of this objective. In the meantime, Boyden proved indispensable in drafting the legislation and helping both groups create programs after the division of the tribe.

After the formation of the AUC, bureau officials continued to view Boyden as their "indispensable man." Uintah superintendent John O. Crow wrote to Area Director Frederick Haverland and urged him to approve the new AUC contract with Boyden. Crow felt that Boyden was "peculiarly qualified by virtue of his detailed knowledge of the problems, his personality and his demonstrated integrity to serve as counsel for both the Affiliated Ute Citizens and

the Ute Tribe."[47] The bureau seemed content with the fact that the mixed-blood organization understood that Boyden would continue to serve as counsel for the Ute tribe. All parties agreed that should "any dispute arise involving a conflict of interest between the two groups and not amicably adjusted between them," Boyden would not represent either party in the controversy.[48]

Meanwhile, Boyden knew that the bureau could not very well do without him. When a controversy arose over how the two Ute groups would pay his contract, Boyden made it clear to BIA officials that he would not accept a contract with one of the groups alone. He used his position as the "indispensable man" to force the bureau to allow him to continue representing both sides.[49]

As the mixed-bloods thus drifted toward termination, largely unaware of the dangers before them, the full-bloods commenced work on a new long-range development plan. This time, however, the objectives were to be far different from those of the earlier programming effort. With the mixed-bloods scheduled for eventual termination, and with Senator Watkins at least temporarily satisfied, the remaining members of the tribe finally had the opportunity to draft a plan that would benefit the membership as a whole.

The General Council meeting of the Ute tribe held on 31 March 1954 not only approved the decision to divide the tribe and partition the assets but also authorized the creation of a full-blood Program Committee to make recommendations for a new long-range program. Full-blood members of the Uncompahgre, Uintah, and Whiteriver bands selected twelve board members, and within a few weeks the group had produced a list of objectives for a long-range program. The full-bloods hoped that their Program Committee would be allowed to accompany the Ute delegation to Washington, but the Tribal Business Committee (backed by Boyden and the bureau) rejected the idea.

Instead, the Program Committee had to settle for sending its list of objectives to Washington with the Ute delegation. In the main, these objectives called upon the government to assist the Utes in developing "the individual full blood members of the Ute Tribe educationally, socially, and economically in order that they may become independent, self-reliant, and self-supporting." But other of the ob-

jectives bore little relation to the terminationist goals articulated by Watkins and his subcommittee. For example, one objective called for the safeguarding and protection of "Indian customs and ceremonies and religious beliefs." Others demanded the preservation of Indian property and resources, while still others solicited the federal government to provide *more* technical and professional services to the tribe.[50] The handpicked Ute delegation made little use of these recommendations, since its intended purpose was to support the partitioning legislation. The long-range objectives of the Program Committee constituted another matter entirely. Most of the Ute delegates felt that the development program could be worked out later.

Meanwhile, as the Ute delegation met with Watkins's subcommittee, a further complication emerged over the issue of per capita payments. Since the mixed-bloods would retain tribal membership for several years after passage of the partitioning legislation and the subsequent division of tribal assets, they also retained their right to per capita payments—a fact that angered members of the full-blood Program Committee. Many of the full-bloods felt that the mixed-bloods should be cut off from tribal assets as soon as possible. Actually, sections 11 and 12 of the pending Partition Act (S. 3532) embraced this sentiment to a certain extent by requiring mixed-blood members to commit 50 percent of their per capita payments toward their tribal indebtedness.

The full-blood Program Committee took this idea a step further. In June 1954, while the Ute delegation was in Washington testifying in support of the legislation, members of the committee on the reservation adopted a resolution calling for an amendment to the bill. They wanted section 12 modified to require individual mixed-bloods to use their per capita payments to pay off at least *50 percent* of their outstanding indebtedness—a commitment that would require some mixed-bloods to surrender their entire payment.[51] Members of the Ute delegation in Washington decided to ignore these new demands. Without exception they felt that the provisions of the Partition Act were sufficiently stringent and that the new resolution would be highly unfair to the mixed-bloods. Nevertheless, the incident served to illustrate the extent of the continuing bitterness some full-blood Utes felt toward the mixed-bloods.[52]

While these events were unfolding in Washington and Utah, the

BIA Division of Program assigned a new program officer, Allan G. Harper, to work with the full-blood Utes. Harper replaced Robert Bennett, who became the superintendent of the Consolidated Ute Agency in Ignacio, Colorado. The change was a painful one in many respects, since Bennett had crafted the agreement to divide the tribe in the first place and in the process won the confidence of the full-bloods. Harper stepped into the position without Bennett's first-hand experience with the tribe.

However, like Bennett, Harper readily grasped the advantages of dividing the Ute tribe. He believed that the "separate interests, aims, and aspirations" of the full- and mixed-blood groups were "irreconcilable" and that attempts to get the tribe together had the result of "holding back both groups." Harper also believed that by terminating special services for the mixed-bloods the bureau would be in position to offer greater assistance to the full-bloods, who were in greater need.[53] Unlike Bennett, however, Harper clearly favored termination policy as the final objective for the Ute people. In his analysis of the Partition Act he noted concern that it might induce full-bloods to marry within their own group and "not outwards with the whites." He also feared that after the division of the tribe, the full-blood Utes might stop working toward termination. As he put it, "there is the possibility that the full-bloods may, after the plan is legislated, be overcome by a feeling that there is no urgency or even need for them to press forward for their own rehabilitation and ultimate termination." Like other bureau officials, Harper overlooked the fact that the Partition Act would deprive the tribe of its most acculturated members, a factor that could just as easily retard the assimilation process.[54]

When Harper first visited the Uintah and Ouray Reservation in early August 1954, he found the situation unsettling. Despite months of warning and the imminent passage of the Partition Act, little had been accomplished toward the creation of a long-range program for the full-bloods. The legislation, soon to be Public Law 671 (signed into law by President Eisenhower on 27 August 1954), stipulated that the full-blood Utes submit a long-range development program within ninety days. Harper had hoped to have the basic elements of a program worked out in about two weeks, but after visiting the agency he wrote to his superiors at the bureau and told

them that he was "appalled, if not discouraged, at the enormous job there is to do. . . . It would now appear that if I can get agreement on the main elements of a program, I shall be lucky."[55]

Harper went on to explain that the main problem stemmed from an overreliance on per capita payments. "These Utes have stopped working," he wrote. "They have gotten themselves into a vicious circle of incurring debt against an expected per capita, which once received becomes the basis of additional indebtedness—for trips, for cars, for luxury foods, etc, etc. So far I have only started on shock therapy to make them realize that the money is running out and that after it is gone, there ain't no more; therefore they had better get started, or stark tragedy lies ahead for them."[56]

What Harper discovered, in essence, was that the situation on the Uintah and Ouray Reservation had not changed much since Bennett had applied his own "shock therapy" a year earlier. The course of the previous year had produced much trauma for the Utes, but little that could be termed "progress." Dividing the tribe had not cured the poverty, or overcome the indecision, or even halted the bickering between the bands. The vote to terminate the mixed-bloods had, it was true, lessened the acrimony to a certain extent, and had placated Senator Watkins, but the fundamental economic problems remained. Therefore, Harper decided on an almost unprecedented step: to confront the real issues, he requested that the bureau conduct an economic survey of the reservation. Such a survey, to be funded by the tribe, seemed a logical place to start given that the main purpose of the long-range program would be to provide for the economic self-sufficiency of the tribal membership.

Unfortunately, bureaucratic inflexibility ruled the day. Homer Jenkins, Harper's superior at the BIA, turned down the request on the grounds that it would slow the programming effort. Jenkins's attitudes reflected those of many other policy makers in Washington at that time, for by the late summer of 1954 termination policy had reached its zenith. The bureau leadership embraced it as a type of political and legislative panacea for the economic problems faced by all Indian tribes, Utes included.

Finally, in early September 1954, Harper reached a level of understanding with the full-blood Program Committee. He proposed to give the Utes a month to sort out their disagreements, after which

he would return with a battery of bureau "experts" to give "final shape and substance" to the long-range program. He told the full-bloods, in other words, that if they would cooperate with the planning effort, the BIA would help them draft a program.[57]

Sorting out the disagreements between the bands proved as difficult as ever. Full-blood Uintah Utes insisted that they did not need to create a new development program, since the provisions of the old plan (created by the now-defunct Tribal Planning Board) suited them. The Uncompahgres countered with a demand for a new program and threatened a further division of the tribe between the bands unless the full-blood Uintahs went along.[58] At the heart of the issue lay the always divisive question of per capita payments. The recommendations of the full-blood Program Committee called for a $4,000 per capita payment, with $1,000 of this amount coming in the form of an unrestricted cash disbursement to adult members. This seemed more than generous to the board, but the Uintahs wanted more. Finally, in the face of the Uncompahgre threat, the two sides compromised on a $4,500 per capita payment, with $500 in cash.[59]

Once the money issue had been resolved, the stage was set for the bureau to assist with the creation of a long-range program. Section 24 of the Partition Act stipulated that the tribe had to submit a program draft to the commissioner of Indian Affairs no later than 24 November 1954. With time running short, Harper returned to the reservation on 20 October. Accompanying him were Area Director Nelson and a battery of bureau specialists in land operations, credit and educational programs, health and sanitation services, welfare programs, and administration. Quite to the contrary of what Senator Watkins might have thought or expected to happen, the BIA had returned to the Uintah and Ouray Reservation in force.

Over the course of the next two days, bureau specialists worked feverishly with their counterparts on the full-blood Program Committee to draft a comprehensive ten-year program for the Ute tribe. Working subcommittees hammered out programs for a wide range of tribal services, including per capita payments, land operations, law and order, education, welfare, health and sanitation, credit, roads, industrial development, and finance. Bureau personnel provided the necessary expertise in offering recommendations, drafting

the proposals, and supplying statistical data. By the end of the second day, planning committees had a complete second draft of a program that identified tribal problems, proposed solutions, and made recommendations for personnel and budget requirements.[60] After years of wrangling, the Ute tribe finally had their long-awaited development program—and it had been produced in two days!

The Program Committee still had to present the draft program to the full-blood membership, and after a series of informal meetings it became obvious that many of the Uintah Utes still bitterly opposed it. In early November the criticism became so intense that the entire programming effort seemed in jeopardy. The Program Committee worried that in the face of such concerted opposition, they could not possibly win tribal approval in time to submit the plan by the 24 November deadline. Committee members therefore decided to "outflank" the opposition by getting the approval of the secretary of the interior *before* submitting the program to the tribal membership and the Tribal Business Committee.

In mid-November, Boyden and Superintendent Gilmore accompanied Francis McKinley and representatives of the three bands (Henry Wopsock, Connie Shavanaux, and Sidney Atwine) to Washington to present the program to officials in the BIA and the Interior Department. Bureau specialists suggested only minor revisions, and the secretary formally accepted the plan.[61] Technically, since the Partition Act required only that the tribe submit a plan and receive departmental approval, the ninety-day deadline had been met. But the tribal leaders also realized that the plan would come to nothing unless a method could be found to unite the full-bloods behind the program.

The harsh winter months of 1954–55 proved to be trying ones for the full-blood leadership. Many work projects were halted due to the weather conditions, and the Tribal Business Committee had to request approval for another $500 per capita payment to ease the hardship. But this too had the potential for increasing the dissension in the tribe, since the provisions of the Partition Act made it possible for the mixed-bloods to request much more than that amount—a situation that would undoubtedly aggravate the full-blood members. To head off the inevitable howl of protest, Rex Curry informally asked the mixed-blood leaders to limit their request to the

same $500 figure as the rest of the tribe. Fortunately for the planning effort, the mixed-bloods unanimously agreed.[62]

Meanwhile, in February 1955, the Program Committee tried a different approach to gain support for the new long-range program. "Orientation classes" were held to teach community leaders about the features of the plan so that they could return and explain it to their constituents. Aside from producing more revisions in the program, the "orientation" approach did little to quell the rising opposition.[63]

By the early spring of 1955 the situation had deteriorated considerably, and opposition to the long-range program had spread from the full-blood Uintahs to the other bands. In April, 101 Uncompahgre Utes signed a resolution that questioned the Partition Act on several grounds, the most pertinent having to do with Uncompahgre dissatisfaction over having to share their Colorado judgment funds with the Uintahs in the first place. The resolution contended that the original 1950 "share and share alike" agreement had been "entered into hastily without adequate study and deliberation, at the prompting and high pressure tactics of tribal attorneys." Afterward, the resolution continued, the band realized that it was "not getting its equal share" and proposed the "accounting, justification, and adjustments" of previously expended funds, and subsequent adjustments in the funds of the three bands.[64] Failure to equitably account for the Uncompahgre share of the money, the resolution declared, had resulted in the proposal to separate the bands and divide the assets. Now, with the refusal of the Uintah full-bloods to cooperate with the Planning Board, the Uncompahgres threatened to divide the tribe even further.

The petitioners also challenged the methods used to divide the tribe. According to their resolution, a nine-person legislative committee had been empowered to work out proposals for dividing assets. This committee actually met and "produced a set of recommendations for legislation," but no written, signed document of the full committee resulted. Some members never had the chance to express the views of the groups they represented. All views were ultimately supposed to be heard and the details worked out in a meeting of the entire committee. Before this could happen, however, the

committee sent the recommendations to Boyden for his legal opinion *only.* But Boyden and the Tribal Business Committee, without authority, sidestepped the legislative committee and sent the recommendations with a "delegation of Utes supposedly representing the Ute Indians" to the commissioner of Indian Affairs, the secretary of the interior, and Congress. Subsequently, these *preliminary* recommendations were incorporated into the provisions of the Partition Act—under the guise of a "request and petition made by the Ute Indians." In truth, the petitioners claimed, the Partition Act resulted from the "specific recommendations, influence, and pressure from the United States Government and members of Congress."[65]

Although their motivations were entirely different, the full-blood Uncompahgres had at least one thing in common with the mixed-blood Uintahs: they belatedly realized that they had been railroaded into a legislative agreement by Senator Watkins and his collaborators. The petitioners resolved that the Partition Act be amended to halt the division of assets until "matters affecting property rights and assets be reviewed as to their validity, particularly in respect to undue influence and pressure exerted by tribal attorneys and to determine whether the actions of said attorneys were motivated by some particular motive."[66] The Uncompahgres sent copies of the resolution to the commissioner of Indian Affairs, Senator Watkins, and others.[67]

Suddenly the actions of the Uncompahgres placed the efforts of Watkins, Boyden, and the bureau in jeopardy. From the bureau's perspective, the most unsettling aspect in all this was the full-bloods' disenchantment with the tribal attorney(s).[68] Boyden had proven indispensable in crafting the Partition Act and in providing legal advice to both of the Ute groups. If the full-bloods should turn away from him now and seek independent counsel to prosecute the claims made in their resolution, the entire programming effort, including the decision to terminate the mixed-bloods, could be tied up in the federal courts for years. With potential disaster lurking, bureau officials responded exactly as they had in 1953, when the earlier programming effort collapsed amid tribal bickering. On that occasion the bureau salvaged the situation by sending Robert Bennett to suppress the opposition. This time the bureau ordered Bennett to take a

temporary leave of absence from his agency headquarters among the Consolidated Utes of Colorado and once again visit the disaffected full-blood Utes at Fort Duchesne.

The Utes convened their General Council meeting at the Randlett Community Building on 24 May 1955. Although from an official point of view Bennett attended only to help Carl Cornelius, the newly assigned programming officer, "learn the ropes," in actuality he played the dominant role in defending the programming effort. As the meeting convened, many spoke against the past programming efforts, especially against the allocation of the Colorado judgment funds. Bennett countered by offering an extensive analysis of exactly where the money had gone. He explained that sixty cents of every dollar had gone directly to the Utes themselves, with the balance going for a variety of useful projects. He seemed to be winning over some of the skeptics with his logic. Another speaker, John Tabbee, a leading figure behind the Uncompahgre protest resolution, agreed with Bennett that disagreements over money had caused the major divisions in the tribe. Perhaps, then, all the Utes needed was a more thorough accounting of their money and how it was being spent.

But after Bennett defused the issue, it became apparent that the full-bloods had yet another reason for resisting the long-range program. Many in the audience resisted the *idea* of a program—any program. After all, had not the mixed-blood program led to their termination? Was it not possible that a full-blood program might have the same result? Some of the more astute full-bloods feared that the programming effort would lead exactly where Senator Watkins had always said it must: to a termination program for the entire tribe.

Francis McKinley, who kept the minutes of the meeting, recorded what happened next: Bennett stood and explained to the audience that the "Mixed Blood program, *was* a termination program and that the Partition Act had definitely set out time tables." But, he emphatically added, "the Full-blood program *was not* a termination program. Yet, he [Bennett] said, we must state in the program that the final objective of the Indian people is to become independent, to become citizens like anybody else and to work for a time when they could be regarded along with the American people. He

said this did not mean that the Indian people would be terminated at a certain definite time." Bennett essentially told the full-blood Utes that the new ten-year development program included termination language and objectives merely to appease Senator Watkins and his Senate subcommittee. The remaining Utes would never be terminated, he said, unless "they felt that they no longer needed special government services as Indians."[69] In the aftermath of these explanations, some of the opposition leaders withdrew their objections. Those presiding over the meeting immediately called for a vote on the proposed program, which passed by a vote of sixty-four to zero.[70]

Shortly after the General Council meeting, a new delegation of full-blood Utes carried the program to the bureau's central offices in Washington for a second approval. Although the bureau leadership accepted the plan in principle, bureau specialists proposed some refinements. After the Program Committee made the necessary adjustments, the full-blood members of the tribe approved their new ten-year development program on 21 November 1955.

Thus, after more than five years of planning, negotiating, arguing, and cajoling, the Utes finally had an approved long-range program. Moreover, the plan provided that the Ute tribe would continue as always, despite the terminationist language incorporated into it. The bureau, meanwhile, would continue to offer assistance—more, in fact, than in earlier years.

On the other hand, for the mixed-blood group the bureau offered only temporary services—a harbinger of a far different future. The official BIA position held that dividing the tribe and partitioning the assets allowed both groups to "progress," but in the aftermath of the 31 March 1954 decision, full-blood members had the same difficulties reaching an agreement that they had *before* the expulsion of the mixed-bloods. Certainly, the same personality conflicts, apathy, and ignorance of the proposals plagued their planning efforts. In the long run, it is doubtful that the termination of the mixed-bloods accomplished anything of lasting value for the remaining members of the Ute tribe. Given that the ten-year program had as its main objective the material improvement of the tribe and the self-reliance of the people, it is ironic that the method chosen to achieve this goal required the termination of the most acculturated mem-

bers. In reality, the termination of the mixed-bloods had nothing to do with the tribe's long-term interests. It came as the unnatural result of political pressures exerted by Senator Watkins's subcommittee and the ensuing fight over the Colorado judgment funds.

After the fateful step of dividing the Utes, both groups had little choice but to go forward with their separate development plans. Once again, Watkins and his legislative mandate forced the issue. Deadlines had to be met. One of the last came on 5 April 1956, when the publication of the final rolls officially divided the Ute Indian tribe. According to the statistics compiled by the bureau, 1,314 full-blood Utes retained membership in the tribe, while 490 mixed-bloods found themselves scheduled for termination.[71]

7 JOHN S. BOYDEN'S MAGNUM OPUS

In the years after the passage of the Ute Partition Act, the mixed-blood Utes found themselves in grave difficulties. Much of the adversity stemmed from their having been collectively deprived of legal counsel. The BIA insisted that the mixed-bloods would be adequately represented by tribal attorney John Boyden, who had also been retained as council for the Ute tribe (now comprised of Uncompahgres, Whiteriver, and Uintah full-bloods), despite the obvious conflict of interest. Boyden himself played a large role in forcing the bureau's hand by refusing to accept a contract with only one of the two groups on the reservation. Since he alone possessed a detailed knowledge of the problems involved in dividing the tribal assets, the BIA acquiesced in his demand that he be permitted to represent both.[1] Individual members of the full-blood group protested this arrangement, but Boyden's influence caused greater misfortune for the mixed-bloods. Under his direction, they fared poorly in the division of tribal property and even worse in the aftermath, when they found themselves in competition with the tribe over land and resources.[2]

The Ute Partition Act required that the tribe and the mixed-blood Utes accomplish three things. The first step called for the establishment of the tribal rolls to determine the exact number of members in the two groups. The bill allowed for a brief appeals period during which individuals could challenge the findings. After the

ratio of the mixed- and full-blood Utes had been calculated, the second step required representatives of each group to meet within sixty days and commence a division of tribal assets. Finally, as a third step, both groups would create separate programs for the future. For the full-blood Utes, long-range planning took the form of the ten-year development program, as explained in chapter 6. For the mixed-bloods, however, the underlying terminationist agenda dictated that there would not be a long-range program. According to the act, after the publication of the final roll the tribe would "thereafter consist exclusively of full-blood members," and mixed-blood members would have "no interest therein except as otherwise provided." The law intended that the mixed-bloods create a plan for the distribution of assets, nothing more.[3]

The final membership rolls, as they were established on 5 April 1956, indicated 490 mixed-blood members and 1,314 full-blood members. On that basis, the ratio for dividing tribal assets was fixed at .7283814 for the full-blood group and .2716186 for the mixed-bloods.[4] Once the ratio had been established, the main problem would presumably center on how to equitably divide the assets. The Partition Act stipulated that the mixed-bloods were entitled to a share (27 percent) of all the tribe's tangible assets, including land, range resources, timber, and other divisible assets, as well as "unadjudicated or unliquidated claims against the United States," all gas, oil, and mineral rights, and other assets "not susceptible to equitable and practicable distribution."[5]

Most members of the tribe and bureau officials connected with the partitioning process simply assumed that the reservation would be divided and that the mixed-bloods would receive a proportionate share. Presumably this would provide a sufficient land base for the mixed-bloods to make a living—at least those involved in cattle or sheep ranching. In 1955 the reservation lands consisted of 1,058,769 acres, of which 985,586 were tribal and 73,183 were allotted. Ultimately, the process of patenting lands to the mixed-bloods would reduce the tribal trust lands to 859,295 acres (802,730 of which were tribal holdings and 56,565 allotted), resulting in a mixed-blood share of 199,474 acres.[6] Even if rangelands were considered exclusively, a straight division of assets would have resulted in approximately three hundred acres for each member of the mixed-blood

group. Utilizing these shares, extended families and friends could conceivably have combined enough rangeland to successfully manage cattle or sheep herds.[7]

But a related issue concerned whether the Uintah and Ouray Reservation could actually be divided in a way that would accommodate both groups. Despite his later statements to the contrary, even Boyden admitted that it could be done. In his testimony on the Partition Act before Watkins's subcommittee, Representative E. Y. Berry asked Boyden how difficult it would be to divide the reservation. Boyden acknowledged that it would be a "tremendous job," involving the classification and valuation of lands, but that it would not be difficult to determine which lands the mixed-bloods would receive. He explained to the subcommittee that the mixed-bloods were "largely Uintahs" and "largely settled in one place."[8] He went on to explain that the proportionate distribution of these assets to the "individuals is another tremendous job. We think it can be done, and we are not going to make the mistake that has been made at some times in the past and just say, 'you get 40, and you get 40.' "[9] In other words, Boyden did not want a straight division of assets. He had another plan in mind—a plan that he had been formulating even before the passage of the Partition Act.

Despite the fact that the act required the two groups to divide the tribal assets *first*, and then for the mixed-bloods to decide on a method for distributing them *afterward*, Boyden turned the whole process around. He had his own ideas about distributing assets, and his plan required that the assets be divided a certain way. He explained his thinking to Watkins's subcommittee as follows: "Our plan develops something like this: We will take a whole canyon and we know that the canyon is all grazing land. So we will organize a corporation under state law, a grazing corporation, and we will determine the carrying capacity and perhaps issue a share of stock for each cow that can be put on the range. Then the asset of the tribe there is, say, 550 shares of stock, which won't be difficult to distribute. And we will go through the reservation in that fashion."[10] Rather than simply allow the mixed-blood population to divide their share of the land as they saw fit, Boyden envisioned that much of it would be tied up in corporations. The mixed-bloods would then receive their share in stock rather than land. From Boyden's

point of view, this plan had several advantages. First, it would provide those who wanted to sell their shares with an easy method of disposing of their interest. It would also allow members already engaged in cattle or sheep ranching to acquire more range, since they would be able to purchase the shares of those who sold out. In addition, Boyden's plan provided a simple method for handling oil, mineral, and other subsurface rights that could not be physically divided. Members would receive shares of stock that would appreciate in value as revenue from these resources became available.

On the other hand, adoption of the plan also meant that the mixed-bloods would receive their assets in a manner foreign to them. Unfortunately, as events eventually demonstrated, Boyden's corporate solution also provided an easy method for liquidating mixed-blood assets. Many mixed-bloods would find it easier to sell their shares than to participate in a plan they did not really understand in the first place.

Senator Watkins and his fellow subcommittee members greeted Boyden's proposal enthusiastically. Watkins undoubtedly knew what Boyden had in mind, since the two men had already worked extensively together to create the partitioning legislation, and his effusive praise suggests that he favored the plan.[11] Watkins told the assembled Ute delegation that they were "very fortunate in their choice of counsel, because they have a man who is so well acquainted with their problems over the years and a man who, I am sure, everybody can trust."[12]

The mixed-blood population had little choice but to trust Boyden. While the Ute tribal leadership finalized the tribal rolls and developed a long-range program (a process that took nearly two years), Boyden meticulously readied his asset distribution plan. The leaders of the mixed-blood group had no actual voice in the matter because no one could legally speak for the mixed-bloods until after the tribal rolls were finalized. Section 6 of the Partition Act stipulated that only "authorized representatives" could speak for the group, and then only *after* the mixed-blood membership had ratified its constitution and bylaws, an election that did not take place until May 1956.[13] Prior to that time, Boyden acted on his own initiative and with the tacit approval of the BIA.

Boyden also made use of the mixed-blood planning board, an

informal body conceived as a precursor to the establishment of a formal mixed-blood organization. On 28 April 1955, Boyden informed the board that he had readied an asset distribution plan for presentation to the Phoenix Area Office. He then met with the area officials and claimed that his plan had the support of the mixed-blood planning group and representatives of the mixed-blood membership.[14] Most of the board members had never seen Boyden's plan and knew nothing of its contents, and the membership as yet had no official representatives. Rex Curry and Albert Harris were frequently cited as "representatives" in this capacity, although they were actually employees of the tribe and bureau, respectively.[15] Harris also served as chairman of the mixed-blood planning board, and in that respect he did function as a representative—but only on an informal basis until ratification of the constitution and bylaws.

Following the publication of the final rolls in the spring of 1956, the mixed-bloods held an election on 12 May 1956, ratified a constitution, and officially became the Affiliated Ute Citizens of the State of Utah.[16] Two months later, on 14 July, Boyden called for a meeting of the entire AUC membership to approve a budget for the new organization, but then, taking a cue from his mentor, Ernest Wilkinson, he unexpectedly presented his distribution plan for ratification. It was a skillful maneuver, no doubt carefully staged, because it left the mixed-blood planning board without an opportunity to oppose or even study the program. AUC board members who were inclined to object had little recourse, because the membership as a whole favored immediate ratification. The reason for the support, according to at least one account of this meeting, was that the AUC desperately needed the $4,500 per capita payment Boyden told them the plan would immediately provide.[17]

Strictly speaking, Boyden had no legal right to proceed with the distribution plan prior to the division of assets. Section 13 of the Partition Act called for enactment of such a plan only "*after* the adoption of a plan for the division of the assets between the two groups."[18] But as had been the case in virtually every step of the process, no one in the bureau worried about specific legal requirements so long as Boyden and the tribe pursued the legislative mandate of terminating the mixed-bloods, and Boyden's plan provided an easy method for accomplishing that goal. From his perspective, the dis-

tribution plan *had* to be approved first, because it precluded any chance that the mixed-blood planning board might opt for a straight division of property, and because it laid the groundwork for the incorporation of assets that Boyden had in mind.

The distribution plan accomplished this last objective in several ways. To begin with, it allowed bureau personnel to provide technical assistance for classifying lands and determining "carrying capacities and other data in order to arrive at a fair value, or other basis for division between the groups . . . as hereinafter more specifically described." Then the plan described how the lands should be divided:

> Range land shall be divided into feasible or economic units, taking into consideration natural boundaries, avoiding fencing, insofar as that is possible. . . . By way of illustration, if a particular canyon is adapted to cattle range and is bounded by ledges or other natural boundaries avoiding or at least assisting in enclosing the same, the carrying capacity of the whole canyon will be determined and after that capacity has been determined, one share of stock will be issued for each unit sufficient to allow one cow to graze for five months in a normal or average year. Those interested then in acquiring range can easily determine the number of shares required in order to accommodate the number of cows anticipated to be run upon such range.[19]

The plan outlined the formation of a series of corporations to control cattle and sheep ranges, mineral assets, and unadjudicated claims against the United States. Before the mixed-blood assets could be distributed, however, they had to be divided from those of the tribe, and the provisions stipulated in the distribution plan immeasurably complicated the process. BIA experts had to determine the carrying capacity of the various rangelands on the reservation, in addition to calculating the value of timber and other resources. In August 1956 the BIA decided that the reservation rangelands would be divided according to "animal unit months" (AUMs) as opposed to the cash appraisal basis preferred by the AUC planning board. Thus, instead of appraising the range for its actual value—a long and potentially expensive process, the bureau decided that the value of the

land would be determined by the amount of livestock it could support.

This decision had far-reaching implications. When the AUC board presented its own proposal for dividing the range in April 1957, Area Director Frederick Haverland rejected it in favor of a much smaller range tract with a higher AUM rating. Altogether, the two Ute delegations were supposed to divide 884,391 acres of range.[20] At a meeting held on 25 April 1957, the AUC delegation presented a carefully prepared plan that assigned the mixed-bloods a proportionate share of the Hill Creek Extension and a share of the original reservation northwest of the Green River (from the Uintah River to Yellowstone Creek in the Uintah Valley). Haverland insisted that the mixed-bloods take the Rock Creek area instead—only 172,000 acres, or 19.5 percent of the rangeland. When the AUC delegates protested that they had 27 percent of the membership, Haverland and the BIA pointed out that the division was not based on acreage, but on AUMS. The Rock Creek area had more range grass and therefore had a proportionate share of the available AUMS.[21]

Once the AUC delegates realized what they were up against, they had little choice but to follow the general recommendations of the bureau land office specialists. Even so, the two sides fought over one particular range unit. Boyden resolved the impasse by negotiating a division of the contested unit which both delegations subsequently accepted. On 25 April the delegates completed the division and signed the maps prepared by the bureau specialists. Haverland later boasted to his superiors that the range division was "within five animal units of being the exact proportion due each side when considering the added breakdown of summer and winter range." He also complimented both groups on the "effective manner in which they dealt with the problem before them," adding that differences had been overcome with "careful thought and deliberation." But it was also true, as he noted, that the bureau personnel were "most instrumental in effecting the agreement."[22]

If the mixed-blood organization fared badly in the division of rangeland, they fared even worse in the division of timber assets. On 23 October 1957 representatives of the AUC again met with members of the Tribal Business Committee, bureau land specialists, and Boy-

den to consider possible methods of dividing timber assets. This time the mixed-bloods were determined to win a favorable agreement. Up to that point, appraisals of the timber reserves had not been satisfactory to them, because the northern part of the reservation had been declared "inaccessible"—meaning that the timber was of no value. So the mixed-bloods started the discussion by pointing to the timber in the Hill Creek Extension, an area in the extreme southern portion of the reservation annexed by the tribe in the 1930s. Arthur Workman, one of the AUC representatives, asserted that the Hill Creek region was not inaccessible and that the mixed-bloods wanted a fair share of the timber located on it. But, he added, his people wanted a survey conducted before making any decisions about it.[23]

Jason Cuch, representing the full-bloods, simply noted that his group was not prepared to discuss the matter. Boyden and the bureau specialists, however, felt that the issue could be disposed of rather quickly, though none of the specialists knew for certain how much timber there actually was at Hill Creek. They suggested that the timber be surveyed and sold and that the two groups divide the profits. Both sides readily agreed to this, but then Boyden and the experts began debating whether the Hill Creek timber was even valuable enough to justify a survey. The specialists explained that a survey would be very expensive and that nothing could be done until the following summer when the roads became passable.

The prospect of leaving the issue unresolved irritated Boyden. "I am not in favor of having a thing that doesn't seem to have much possibility just stand out and cause a delay," he said. He then suggested that the full-bloods simply "buy it and wind it up so that we don't have [it] to worry about."[24] But even that proposition required some kind of survey. The bureau specialists pointed out that the timber only grew on the north slopes of the canyons, all of which were watershed areas, and that the timber might be necessary for erosion control. These arguments had the effect of steadily reducing the value of the timber in the minds of the participants. Finally, Otto Weaver of the bureau offered his assessment that the total value of the timber would not "run more than one thousand dollars."

Boyden proposed that the bureau specialists make an arbitrary assessment on the value of the timber—sight unseen—so that the

tribe could buy out the mixed-bloods' interest in it. But Elizabeth Bumgarner of the AUC protested, arguing that "we have people we must answer to. If we just tell them that it is inaccessible they will be very angry." Preston Allen, also of the AUC, joined in. "The main thing," he said, "is to take care of these problems properly in the division."[25]

The mixed-bloods' protest left Boyden in exactly the kind of circumstance that made his representation of both groups a conflict of interest. Yet if he was aware of his conflict, he never betrayed any sign of it. He responded to Bumgarner and Allen, "That is right, it is also what the mixed-blood[s] want. We don't want the people to say you just gave our properties away." He then explained, "If we could just say it is worth so much as to whatever it happened to be. I suppose with this group of technicians here you could arrive at this as quickly as you could with so many appraisals."

Bumgarner, thinking that her attorney had her best interests in mind, passively went along, saying, "If something has been set up in that matter, and it was divided along with the rest of them we won't get into trouble."[26] Boyden then passed out slips of paper to the six bureau specialists and Rex Curry—"our experts," he called them. Each of the seven wrote down an estimate of what they thought the timber was worth. Then Boyden averaged the estimates and came up with the figure of forty-six cents per acre. In that way the tribe agreed to pay the AUC the munificent sum of 27 percent of forty-six cents (roughly twelve cents) per acre for their share of the Hill Creek timber. Boyden's performance as counsel for both sides had been so seamless and perfect that the AUC representatives did not even realize that they had been taken in. Afterward both Ute groups voted unanimously to approval the proposal. Preston Allen liked Boyden's solution so much that he suggested that all of the inaccessible land be dealt with the same way.[27]

The Ute and mixed-blood delegations substantially completed the division of assets late in 1957, and the mixed-blood population met and unanimously ratified a resolution approving the division on 18 January 1958. The vote finalized a long and complicated process wherein most of the mixed-blood members living on the reservation purchased their own home sites and farms from the tribe, while the

TABLE 4: *Tribal and AUC funds expended in the division of assets, as of January 1958*

Item	Payments made by mixed-blood group	Payments made by full-blood group
Purchased assignments	$63,000	$1,070
Unit adjustments		25
Range adjustments	390	
Townsite	580	14,550
Timber, Northern Reservation		33,480
Timber, Hill Creek area (estimated)		7,500
Inaccessible areas (estimated)		13,000
Total payments for each group:	$63,970	$69,632
Net difference due the Mixed-blood group:	approximately $5,600	

Source: Fredrick M. Haverland to the Commissioner of Indian Affairs, 29 April 1957, RG 75, BIA, accession #64A-528, box 105, file 8201-57-308.

tribe in turn bought out the mixed-blood interest in the town site and timber reserves (see table 4 for a summary of the relevant data). The commissioner of Indian Affairs formally approved the division on 24 March 1958.

The mixed-blood members generally supported the division of assets to the degree that they understood it, although few knew what termination would mean for them individually. Most simply wanted their share of the tribal assets so they could continue to eke out a living. Ironically, the most vociferous opposition to the distribution of assets came not from the mixed-bloods but from a small group of full-blood Whiteriver and Uintah Utes calling themselves the "Special Committee of Independent Ute Indians," or as they were more commonly known later, the "True Utes." These Indians wanted to abolish all vestiges of government interference in tribal affairs. They sought a return to traditional Ute ways and encouraged the tribe to observe the teachings of the elders.

The first significant expression of dissatisfaction from the full-

blood faction came late in 1956, about a year after the completion of the ten-year program for the full-bloods. Julius Twohy, with the support of sixty full-blood members, sent a lengthy letter of protest to BIA commissioner Glenn Emmons arguing that the full-blood program had been created without the participation of the tribal membership. Twohy charged that the business manager (Curry) and his accomplices created the plan at the behest of Senator Watkins so that the Ute tribe could be "used as a basis for dealing with other Indians throughout the United States" and that the termination program did not take into consideration the limited extent of full-blood acculturation. "The full blood Indians are not educated to rub elbows with the white man," he asserted. "The Indians do not understand and have never understood the program. The program itself was premature by at least twenty years."[28]

The protest met with the usual bureaucratic response. Bureau personnel simply assumed that the signatories were either ignorant of or uninformed about the details of the ten-year program. One of the assistant commissioners responded by denying Twohy's assertions without actually addressing them. For example, the claim that the Utes had not been kept informed received the reply, "We do not understand why you make this inference." The assistant reminded Twohy that "only the Mixed-blood group is being terminated under the Act of August 27, 1954, and that the reservation will remain intact."[29] From the point of view of the bureau, the program had already advanced to policy and the matter was closed.

But the protesting full-blood Utes knew more about the situation on the reservation than the bureaucrats realized. Twohy's arguments were essentially correct: the Partitioning Act had been designed to showcase Senator Watkins's termination program, and the ten-year program for the full-bloods *did* include provisions for the eventual termination of the entire tribe. Moreover, the plan had been developed by the tribal leadership with only minimal input from the membership, the majority of whom had, as Twohy put it, "never seen it" or ever been "called together for the purpose of discussing it." Twohy also inferred that if the termination plan come to fruition, "within a period of five years the funds of the Ute Indian Tribe will be dissipated, the reservation divided and the people so in-

censed with each other that they will be unable to live harmoniously in the same locality."[30] His prediction would have special relevance for the terminated mixed-blood Utes.

A year later, after the division of assets in the spring of 1958, the dissident full-bloods sent a set of resolutions and a petition to the commissioner and a few select congressmen. The documents asked that Public Law 671 (the Ute Partition Act), the Wheeler-Howard Act, and "certain other things" affecting the reservation "be disposed of." The group also sent a telegram to the secretary of the interior, asking him to disapprove of the division of the tribal assets —not because they were opposed to the expulsion of the mixed-bloods, but because they objected to the loss of reservation land. The telegram stated, "We feel that the majority of the Indians are against the land division or the sale of anymore [*sic*] of the Indian lands on the Reservation."[31]

Needless to say, the objections of the True Utes made little difference to the government officials who received them. Roger Ernst, assistant secretary of the interior, responded to the telegram by simply reciting the history of the division of tribal lands and the relevant authority for these actions. Then, in a classic bureaucratic fashion, he closed with the comment, "It is hoped that this clarifies the question of the approval of the division of the Uintah and Ouray property."[32]

The division of tribal assets took place in spite of the full-bloods' protest, and afterward the sole purpose of the AUC board devolved to directing the three corporations set up to manage the group's assets. John Boyden, architect of the plan that created the organization, never intended that it be anything more. In fact, he told Watkins's subcommittee that he expected the AUC to "disintegrate" except for their distributing corporations, which would presumably "go on indefinitely."[33] In fact, the distribution plan perfectly reflected the terminationist ideology that inspired it. In keeping with Watkins's mandate to "liberate" Indians, the plan declared that it did not "anticipate that the Mixed-blood group [would] allocate any funds for joint welfare, law and order, education, or other similar purposes." These things would no longer be necessary, because the mixed-bloods would "become unrestricted citizens of the State in which

they live, sharing in the responsibilities and advantages of the State just as other citizens do."

In a fitting coda to the religious ideology that motivated Senator Watkins to begin with, the plan went on to remind the mixed-bloods that "equal rights and equal privileges are obtained by sharing in common with other citizens the civic, social, and religious responsibilities that fall upon any given community. We can best 'preserve the cultural values we may possess' by sharing them with our fellowmen."[34] Such sentiments were familiar to practicing Latter-day Saints like Boyden and Watkins, religiously motivated individuals who habitually proselytized their values. But Boyden saw little value in preserving elements of Ute culture. He merely expressed his belief that the mixed-bloods would readily assimilate when forced into the dominant culture. The underlying philosophy of his plan had not advanced beyond the "sink or swim" sentiments expressed by Watkins and other terminationists years earlier.

The metaphor still applied in the late 1950s. Despite the florid rhetoric of the distribution plan, the mixed-blood people still had to cope with the nearly unfathomable process of converting shares of corporate stock into a livelihood. In accordance with the plan, three corporations were established under the laws of the state of Utah on 9 December 1958. The most important of these, the Ute Distribution Corporation (UDC), jointly managed with the Ute tribe all assets not subject to division. These assets included unadjudicated claims cases pending against the Untied States, as well as income from gas, oil, and mineral resources held by the tribe. The distribution plan stipulated that each member of the AUC would receive ten shares in the UDC—a potential windfall, since the proceeds from these assets were to be distributed in the form of stock dividends as they became available.[35]

Tribal leaders had reason to expect significant returns from the UDC. Not only was the Uintah and Ouray Reservation rich in mineral deposits and, in particular, oil shale, but the three Ute bands also expected judgment money from cases pending before the Indian Claims Commission. In February 1957, news reached the tribe that Ernest Wilkinson and his law partners had won favorable decisions in two ICC dockets filed on behalf of the Uintah Utes. In the first, the ICC ordered compensation in the Spanish Fork claim, wherein the

Uintah Utes sought damages for surrendering 5.7 million acres (via the Spanish Fork Treaty of 1865) in exchange for treaty rights never ratified by the U.S. Senate.[36] The second docket concerned the Uintah suit for the value of the Uintah and Ouray Reservation taken by the government in 1881–82, when the White River Utes were located there. The commission held that the United States had to pay for an undivided one-half interest in the entire reservation, as it existed on 15 August 1882.[37]

In both cases the ICC was expected to reward the Uintah Utes a substantial judgment against the United States, exactly as the Uncompahgre and Whiteriver Utes had received in 1950 in the Colorado claims cases. Although it would take some years for the Utes to realize the money from these decisions (which ultimately totaled $7.7 million), the mixed- and full-blood Utes were required to share it, since the July 1950 "share and share alike" agreement still applied. With the establishment of the UDC, however, the tribe and the AUC finally had a mechanism for equitably distributing the judgment funds without any strings attached.[38]

Aside from the UDC, the distribution plan called for the creation of two corporations, the Antelope Sheep Range Company and the Rock Creek Cattle Company, to manage the range areas held in common by the mixed-blood stockholders. Eventually the members were to receive stock certificates representing the one share members received for each corporation, and then they could sell them or trade them as they saw fit. In the meantime, however, the mixed-bloods already engaged in stock raising had to find other means of maintaining their herds.

Formerly, the mixed-bloods herded their cattle or sheep on the common sheep ranges in Antelope Canyon or the Uintah cattle range. After the establishment of the range corporations, they found that they were prohibited from using tribal ranges. They had expected as much, but they were not prepared to deal with the restrictions that corporate ownership placed upon them. The single share of cattle stock each member received conveyed the right to graze merely two and a half head of cattle on the AUC range for six months, and the single share of sheep stock permitted the grazing of only five sheep for a year. Mixed-blood ranchers quickly realized that no single shareholder could possibly run livestock without acquiring addi-

tional shares. Clearly, the mixed-bloods would need some mechanism to buy, sell, and trade their stock so that they could be combined in a meaningful way. Boyden assured them that these limitations could be overcome.[39]

In the meantime, tribal factionalism increased dramatically as the Affiliated Utes were forced to compete economically with the full-blood members of the tribe. Now that they were excluded from membership, the old label "half-breed" took on more portentous connotations. Mixed-bloods scheduled for termination became competitors in the marketplace and usurpers of tribal land and resources. As a measure of the bitterness and enmity that existed at the time, the Tribal Business Committee passed yet another ordinance to prevent future generations of mixed-bloods from becoming members. On 17 September 1958 the committee decreed that "no person born subsequent to the adoption of [said ordinance] shall be enrolled unless such person is of 5/8 or more degree Ute Indian blood of the Ute Indian Tribe." The Partition Act and its clarifying ordinances essentially accomplished the same thing, but with all of the difficulties that had gone before, including the struggle to divide the tribe and partition the assets, Commissioner Emmons simply accepted the ordinance. Subsequently, membership in the tribe required five-eighths Ute Indian blood.[40]

Meanwhile, the Tribal Business Committee belatedly discovered that the partitioning process created substantial problems for the tribe as well. Rangeland taken by the mixed-bloods had an adverse effect on tribal cattle grazing, especially the loss of the Rock Creek region. Henry Cuch, then acting chairman of the Tribal Business Committee, wrote to Commissioner Emmons and complained that these losses had "crippled the operations of the full bloods, due to a lack of balanced range conditions."[41] Cuch, along with Rex Curry and the other Business Committee members, looked to Boyden to find ways of "balancing" the range conditions, even if it meant undercutting the control of the mixed-blood range corporations.

By the late 1950s, termination policy had largely run its course. Many in the BIA witnessed the disastrous effects of termination on the Menominee and Klamath tribes. Congress, too, proved more

sympathetic to the trauma induced by termination. Representative Lee Metcalf of Montana accused the bureau of using blackmail techniques to induce tribes to agree to the policy.[42] Defenders of termination were few, particularly after the departure from Congress of ideologues such as E. Y. Berry and Arthur V. Watkins. Senator Watkins, long the leading proponent, lost his bid for reelection in 1958 to Democratic challenger Frank E. Moss.

Evidently, Boyden also experienced a change of heart at this time. It may be that he regretted his role in partitioning the tribe, at least to the degree that it diminished the Uintah and Ouray Reservation trust lands. Autobiographical materials compiled by Boyden late in his life and subsequently published by his children support this view. His biography simply states that he "did not favor the termination policy promoted by Congress during the late 1940s and 1950s," and further, that "in 1954 . . . contrary to John's advice, the mixed-bloods met as a group and voted to be terminated from federal supervision. By 1961, all arrangements for the finalization of termination had been completed."[43] The seven crucial intervening years, during which Boyden played a central role in facilitating the mixed-blood termination, are not mentioned. Boyden apparently preferred not to explain his own involvement in the affair.

Regardless of his motives, by the late summer of 1959 Boyden actively worked to undermine the stability of the AUC range corporations and to return mixed-blood grazing land back to the tribe. Events soon demonstrated that he not only possessed the knowledge to set up the range corporations but also knew how to render them useless to their intended beneficiaries.

Charters for the two range corporations had been issued only months earlier, in December 1958. At that time Boyden assured the AUC Board of Directors that members could "sell or trade their shares" by simply "signing the [stock] certificates."[44] However, members had to wait until the certificates could be distributed, and that could not happen until the fee patents were issued for the land. In the meantime, mixed-bloods in the livestock business struggled in vain to acquire grazing rights by a mechanism provided in the Partition Act known as the "private treaty." Boyden and bureau officials assured them that this provision allowed members to buy, sell, or

trade their shares of stock by making private arrangements among themselves. Consequently, 100 to 150 shares of stock changed hands in this manner, and a few of the mixed-bloods managed to acquire enough to maintain modest herds of about one hundred head of cattle. It was not enough, but the mixed-bloods lacked the necessary capital to acquire more.[45]

The Partition Act also granted full-blood members the right to acquire shares in the corporations through the private treaty provision, although they had no real reason to do so since they retained rights to the tribal ranges. But Curry and the full-blood members of the Tribal Business Committee began to question why *members* of the tribe had the right to purchase shares of mixed-blood grazing stock, while the *tribe itself* could not. They reasoned that if the tribe could acquire mixed-blood range rights, then some of the range lost through the tribal division could be recovered.

Actually, there were several excellent reasons why the Partition Act prevented the tribe from buying AUC stock. The private treaty provision constituted the only possible mechanism for mixed-bloods to acquire sufficient grazing rights under the corporate structure. Should the tribe compete for shares, individual mixed-bloods would be unable to combine their shares and would be forced out of business. Individual full-blood members, on the other hand, were not likely to compete in this manner, since they already had access to tribal ranges. Moreover, tribal acquisition of AUC grazing rights would deprive individual mixed-bloods of their rightful share of tribal assets, thereby undercutting the basic premise that termination would make them self-sufficient.

Unconcerned with these facts, Tribal Business Committee members pressured Boyden to find a way for the tribe to acquire shares in the AUC range corporations, and Boyden once again found himself in a conflict of interest. The AUC still retained him as counsel, and he was obligated to protect their interests, but his sympathies had shifted toward the tribe. In August 1959 Boyden met with bureau officials and convinced them to produce new regulations that omitted the private treaty provision.[46] He proposed instead a subtle but portentous change in the policy: henceforth, no shares of stock could be sold or traded, even between family members, without first being of-

fered on the open market. Boyden contended that under these new conditions, the Ute tribe would have the right of first refusal on stock purchases.

The newly proposed regulations had vast implications for mixed-blood Utes slated for termination. It meant that they could not combine their shares of tribal assets in any meaningful or productive way. Rangeland, for example, could not be merged to support viable herds of livestock. Even worse, without the private treaty provision, non-Indians might conceivably outbid the tribe for AUC land—leading to the loss of tribal or AUC control. This last scenario threatened the very existence of the mixed-blood corporations, since an outsider could gain a controlling interest and dissolve them.[47] In short, before termination even went into effect, Boyden manipulated the regulations in a way that eliminated any possibility of mixed-blood self-sufficiency.

For his act of betrayal, the AUC Board of Directors refused to renew Boyden's contract in the fall of 1959. By that time, after less than one year of operation, the AUC range corporations had fallen into complete disarray. With the news of the new bidding regulations, a few of the mixed-bloods retained Vernal attorney Hugh Colton in an attempt to protect the few shares they managed to acquire via the private treaty provision. When the bureau published the new regulations in August 1960, the *prior* private treaty sales were voided on the ground that they did not conform. Mixed-blood livestock operators lost the shares they had already acquired, despite the fact that they had been "repeatedly told by the legal counsel and the Superintendent of the Uintah and Ouray Reservation that they should purchase whatever shares of stock might be offered to them." Colton's new clients found themselves caught in this bureaucratic trap, even though the terms of the private treaty sales had been personally approved by Uintah and Ouray superintendent Darrell Fleming.[48]

In the meantime, Boyden and the Tribal Business Committee moved to buy stock in the AUC range corporations. In March 1960, the Business Committee wrote to Commissioner Emmons and informed him that the AUC range difficulties "could be greatly alleviated if some arrangement could be made to sell all of the [AUC] range for cash and still make some reasonable provision for the livestock owners of the Mixed-blood group." The tribe proposed to buy the

stock of both corporations for the appraised value and then lease the range back to the livestock owners for a period of twenty years. The letter pointed out several additional advantages that would accrue to both groups: the sale would permit mixed-blood members to pay off their debts to the tribe, the land would be retained by Indians, and the full-bloods' range problems would be alleviated.[49]

The commissioner's office took the proposal seriously, and six weeks later it told the Tribal Business Committee members that it would allow the tribe to proceed with the deal on two conditions: first, the purchase of stock in the corporations would only be approved if the tribe could obtain a controlling interest; and second, all stock purchases had to follow the regulations established by the Partition Act, the corporate charters, and bureau regulations.[50] Emmons and the bureau did not want the tribal officers wasting money on AUC stock unless they could gain control. Only then, they reasoned, would the tribe be in position to benefit from the purchase. The needs of the mixed-blood Utes were utterly disregarded.

Despite Emmons's good intentions, the conditions he imposed created significant obstacles for the tribe. Unable to restore the private treaty provision, several mixed-blood members (including those represented by attorney Hugh Colton) shifted tactics and charged that the tribe did not possess the right of first refusal on the AUC range stock. They pointed to the applicable sections in the bureau regulations which stipulated that only *members* of the tribe had the right of first refusal—not the tribe itself. Much to their surprise, Area Director Haverland agreed with them. In a letter to the commissioner, he took up the mixed-blood position and argued that bureau regulations did not include the "Ute tribe" in the category of "member of the tribe." He further warned that continued attempts to bend the regulations would "open the Department to a lawsuit."[51]

If Haverland ever expected to succeed with his objection, he quickly discovered the limits of his influence. Boyden countered by dashing off a personal letter to his friend in the bureau and fellow Latter-day Saint, Associate Commissioner Rex Lee. "We have enough difficult problems to work out," he bitterly complained, "without being embroiled and entangled with technical definitions." He then followed with the age-old threat to bureau author-

ity: "We know there are many non-Indians using every scheme possible to circumvent the regulations and the law in order to acquire this property from the Indians."[52] In fact, something like the opposite was true—the bureau was attempting to circumvent the law to allow the tribe to acquire the mixed-bloods' land. Nevertheless, Boyden's letter had the desired effect. Two telegrams went out almost immediately: one from the secretary of the interior's office, informing Haverland that his interpretation was not shared by the department, and another from the commissioner's office, reassuring Boyden that Haverland had been informed of his error.[53]

Even though the tribe, through Boyden's maneuvering, had gained an undisputed right of first refusal on the AUC stock, the tribal officers still had to find a way to acquire a majority share. By the fall of 1960 many mixed-bloods wanted to sell, because they had no means of either effectively using their stock or acquiring more. The prospects had been difficult beforehand, but now that the tribe could meet any bid, it became impossible. The situation changed almost immediately, however, when Margaret Sprouse, a mixed-blood member, wrote to every AUC member and urged them to sell their stock certificates to her. She offered to pay a price over and above the appraised value the tribe would pay.[54] By late September, Sprouse had accepted offers on 253 shares in the Antelope Sheep Range Company and another 253 shares in the Rock Creek Cattle Company.

The tribe also bid on most of these shares, and so, in accordance with bureau regulations, both parties were instructed to submit sealed bids for the stock. Since the tribe would only offer up to $350 per share and Sprouse up to $750 per share, it appeared as though the tribe would be defeated in its attempt to gain control. At this point Boyden once again intervened and urged the Tribal Business Committee to protest Sprouse's offer on the purported grounds that it violated bureau regulations. The Business Committee argued that Sprouse could not possibly have the capital to finance such a large transaction and that she had to be purchasing the stock for non-Indian interests. Boyden had no actual proof of this allegation, but he demanded that the BIA conduct an investigation.[55]

In fact, Sprouse did have the financial resources to make the bid, since she was married to one of the wealthiest livestock owners in

the region. Nevertheless, Boyden effectively used his connections in the bureau to derail Sprouse's bid by arguing that her husband's resources constituted a nonmember offer![56] Three months later, the secretary of the interior finally ruled that the superintendent had to refuse Sprouse's more lucrative bid for the stock.

Eventually the tribe purchased most of the shares Sprouse sought to buy, but even before that occurred, Boyden found a way for the tribe to purchase an insurmountable block of shares. He accomplished this feat by persuading officers of First Security Bank of Utah to sell shares of mixed-blood stock held in trust for minors and other members not considered competent to manage their own affairs. Boyden told the trust officers that the shares were of limited value to the mixed-bloods and that the shares would be substantially devalued unless the tribe obtained control of the AUC corporations. As he explained the situation, non-Indians might otherwise gain control and the mixed-blood trustees would become minority stockholders.[57] Disregarding its responsibility to protect the fiduciary interest of these individuals, First Security Bank dispatched an officer to the reservation to obtain consent from the ill-informed parents and guardians of the stockholders. The bank informed them that the stock would be sold for $1,000, plus an additional $100 for future hunting and fishing rights. Where the financial inducement failed to produce the required signatures, the officer of the bank simply told parents that selling the stock would be in the best interests of their children.[58] In short order, the bank had permission to sell 147 of the 175 shares it held in trust. Thus Boyden had successfully convinced a large and conservative banking institution, with extensive ties to both the federal government and the Mormon Church, to execute the sale with astonishing haste.[59]

With the sale of the minors' shares, the mixed-blood livestock owners completely lost control of the AUC corporations. The remaining stockholders had little choice but to sell out, and the tribe gained control. Unable to work the rangelands productively, and blocked in every attempt to sell or combine the grazing rights to them, the mixed-bloods became, in effect, both disowned *and* disinherited. The tribe, meanwhile, largely succeeded in reversing the range losses that resulted from the Partition Act. In 1964 the tribe filed petitions with the state of Utah to formally dissolve the two de-

funct range corporations, and most of the land reverted to the reservation. The tribe was forced to settle, however, with thirty-eight mixed-blood stockholders who never sold out. Two years later these holdover mixed-bloods received the one thing they wanted all along: 372.38 acres of land per person.[60]

The conversion of stock to land came far too late for the vast majority of mixed-bloods, who had been forced to sell their stock long before. But the events of the early 1960s threatened much more than financial loss. In 1961 the secretary of the interior fulfilled the requirements of the 1954 Termination Act by placing a small announcement in the *Federal Register*. It stated simply that "effective midnight, August 27, 1961," individual mixed-blood members of the Ute Indian tribe of the Uintah and Ouray Reservation "shall not be entitled to any of the services performed for Indians because of his [*sic*] status as an Indian." In final, ominous tones it concluded, "the Federal trust relationship to such individual is terminated."[61]

After termination, many of the mixed-bloods fell into the familiar pattern of poverty, fraud, and despair. Most had already lost their shares of range stock and with them whatever limited means of sustaining themselves they formerly possessed. They still retained their shares in the Ute Development Corporation, though—primarily because the stock certificates had been retained in the vaults of First Security Bank. The UDC stock was never intended for sale. It functioned primarily as a mechanism for distributing dividends from oil and mineral assets, as well as judgment funds awarded in the ICC dockets.

Beginning in 1963, however, mixed-blood Utes began selling shares of UDC stock in a last-ditch effort to stave off poverty. Once again, First Security Bank trust officers flaunted the legal safeguards that were supposed to prevent stockholders from selling without first being warned of the consequences, and this resulted in a situation of almost unparalleled fraud and malfeasance. The assistant manager of the Roosevelt branch of First Security Bank, for example, developed a thriving brokerage in UDC stock in the lobby of the bank.[62] Before the end of the year, a large number of mixed-bloods had been induced to sell their valuable UDC stock for a paltry few hundred dollars, and often a used automobile. Unbeknownst to the

original holders, the stock soon passed into the hands of non-Indian owners, who paid a far higher price for it.[63]

This development proved all the more tragic for the mixed-bloods, because by the end of 1963 UDC stock had already paid dividends of over $7,100 per share. The stock represented the vast oil and mineral resources of the Uintah and Ouray Reservation—resources that would last indefinitely. As a final bit of irony, the UDC dividends in 1963 also included funds from the ICC dockets filed on behalf of the Uintah band.[64] Most of the mixed-bloods were descendants of the once powerful Utah bands that became the Uintahs. Now, in a final miscarriage of justice, the award money intended to compensate these Indians for the loss of their ancestral lands in Utah went to the stockholders of the Ute Distribution Corporation. But many of the Uintah mixed-bloods had already sold their shares to non-Indians and left the region. It seemed that Senator Watkins's objective had been realized at last: these Utah Indians vanished into the mainstream of American life, many of them to become welfare recipients or to take menial jobs in the unfamiliar urban centers of the West.

8 TERMINATION AND THE PERSISTENCE OF IDENTITY

With the publication of mixed-blood names in the *Federal Register* and the subsequent loss of shares in Ute assets, the long night of termination began. Most of these people had no real comprehension of what had happened to them. They did not know if termination meant that they were no longer Indians, if they were no longer members of the Ute tribe, or even if the legislation applied to them at all. If the word "termination" meant anything, it meant "confusion."

Slightly less than half of the original 490 terminated mixed-bloods—the majority of whom were minors at the time Congress passed the Ute Partitioning Act—are still alive. It is interesting to note that of the 490 individuals on the March 1956 termination roll, 233 were minors who had neither the opportunity to present their views nor a vote in the proceedings. It is also worth remembering that their parents hardly fared better in the decision process, as very few Uintahs or mixed-bloods attended the critical 31 March 1954 meeting. In fact, those who attended the meeting (an estimated 400 individuals) constituted barely 22 percent of the tribe. In other words, a minority assembly of tribal members, composed almost entirely of Uncompahgre and Whiteriver Utes, decided to terminate the majority of the Uintah Utes, almost none of whom were in attendance. Little wonder that confusion reigned in the aftermath.

The confusion continues. When asked about termination,

mixed-bloods are quick to point out that neither they nor their parents understood what was happening at the time. Many still seek to comprehend the situation. Barbara Sutteer, an intelligent, acculturated woman, has pointed out that even though her name is listed on the final roll, she did not understand what happened and still does not understand it.[1] Sonny Van and Smiley Denver, a pair of terminated Uintahs who disagree about nearly everything else, agree on this point. As Van explained it, "To this day even the older ones that was [*sic*] adults at the time of termination, you can ask them, what did termination mean or how did it come about? *They can't tell you.* It was a real snow job. . . . And, to be a mixed-blood, where the tribe doesn't want you, and the non-Indians don't want you, you get pretty sore straddling that fence."[2] Smiley Denver offered a similar perspective: "I don't remember much about it. I was only seventeen or eighteen years old and was away to school. I didn't even know they were doing it until I came home, and my father told me that we'd been terminated. He was very upset about it because it really wasn't publicized . . . they didn't even ask the majority of the mixed-bloods whether they wanted to be terminated or not. Most of them never even knew it until it was done. It was kind of a sad deal."[3]

Unable to comprehend what termination meant for them in terms of tribal and Indian identity, mixed-bloods have tried over the years to recover the things they do understand: a share of royalty monies, rangeland, and hunting and fishing rights. Acculturation has been a slow and uncertain process, but they have learned one thing along the way: how to litigate. Filing suits in federal court is a way of life for a few of the mixed-bloods, and not too surprisingly, these individuals have become rather notorious in district court. One judge (nicknamed "Old Ironhand" by the mixed-bloods) pointedly told Calvin Hackford: "I don't want to see you in this courtroom again, unless it's for a very good cause."[4] Court officials tend toward the view that mixed-blood lawsuits are frivolous, but for many years litigation has been the only mechanism available to these people in fighting a system that is clearly biased against them.

The litigation process began in 1964 when a handful of terminated mixed-bloods contacted attorney Parker M. Nielson with the complaint that they had been cheated out of their Ute Distribution Corporation stock. Nielson then spent the better part of twenty

years litigating securities fraud cases on behalf of these and other mixed-bloods. In the process he uncovered the sordid details surrounding the fraudulent sale and dissolution of mixed-blood assets as well as the devious role played by tribal attorney John Boyden.[5]

Nielson's most significant and successful case, *Reyos v. First Security Bank*, charged that the bank, acting as an intermediary for non-Indian purchasers, had defrauded mixed-bloods in the sale of their Ute Distribution Corporation stock. In April 1968 the judge issued a finding in favor of Nielson's plaintiffs but awarded only $1,500 per share of stock in damages. Disappointed by this paltry settlement, the mixed-bloods, led by Preston Allen, responded by resurrecting the name "Affiliated Ute Citizens of Utah" and filed a suit against the federal government in an attempt to wrest control of the mixed-blood mineral assets from the UDC.[6]

By 1968 the question of asset management had become a rankling issue for the mixed-blood members. Many believed that the Affiliated Ute Citizens had an inherent right to manage assets as well as to decide other matters of concern for the terminated group, but Boyden filed a brief on behalf of the Ute tribe contending that Allen and his associates had arrogated the name "Affiliated Ute Citizens" and that the organization had gone out of existence years earlier after conveying its title and authority to the UDC.[7] Thus began a long controversy that continues to this day, with the UDC continuing as the sole managerial apparatus for mixed-blood assets.

First Security Bank, in the meantime, appealed the *Reyos* case, and together with the claims case *Reyos* became consolidated under the name *Affiliated Ute Citizens v. United States*. The Tenth Circuit Court of Appeals overturned Nielson's victory in *Reyos*, finding that First Security Bank had engaged in nothing more devious than "ordinary banking practices." However, the U.S. Supreme Court granted Nielson's petition for a writ of certiorari and reviewed the case in August 1971. The outcome was decidedly mixed, with the Court agreeing with the original judgment in *Reyos* that First Security Bank *had* defrauded the Indians whose interests it was bound to protect. But the Court also found that the United States did not share in the bank's liability.[8] Thus the mixed-blood group won on principle but did not receive the compensation they were seeking.

Despite the conclusions reached by the Supreme Court in the

Reyos case, considerable evidence points to the fact that the Court did not delve into the facts surrounding the creation of the UDC, probably because it affirmed the dismissal of the *Affiliated Ute Citizens* case due to a lack of jurisdiction. The facts are unclear, but a close reading of the resolutions adopted by the AUC in late 1958 and early 1959 suggests that the members merely followed the lead of Boyden, who quietly engineered the UDC takeover of the AUC management without the informed consent of the directors, who continued to conduct business in a normal fashion.[9] Despite the lack of a clear-cut determination in this matter, the Supreme Court decision has been used to head off further adjudication of the management of mixed-blood assets.

Concurrent attempts to recover compensation for the loss of hunting, fishing, and water rights also met with frustration. In October 1977 the U.S. Court of Claims decided that the statute of limitations prevented consideration of their claims. In similar fashion, a second case filed against First Security Bank on behalf of mixed-blood minors, *Meira v. First Security Bank*, also resulted in failure when the judge ruled that the minors should have joined other plaintiffs in the 1965 *Reyos* case.[10]

In subsequent years, mixed-blood plaintiffs have engaged in a multitude of lawsuits, mostly aimed at the United States or the UDC. Factionalism and cross-purposes have combined to defeat many of these efforts, although there have been occasional successes. Oranna Bumgarner Felter won an important victory against the United States and the Ute tribe in *United States v. Felter*, decided in district court in Utah in 1982 and affirmed by the Tenth Circuit Court of Appeals in 1985. Felter sued after being convicted of fishing on Ute tribal land without permission. She argued that her status as a mixed-blood did not abrogate her treaty rights, and the court agreed.[11] For the most part, however, the recourse to legal remedies has only engendered greater factionalism and undercut the possibility of unified action. Even Parker Nielson finally concluded that these disputes did not "lend themselves to judicial resolution." He noted that in each case, the decisions rendered seemed "to be expressive of an attitude that the termination episode must be closed."[12]

During the 1990s the mixed-blood Utes took a few halting steps in a new direction. Increasingly, they looked beyond compensation

and sought the reinstatement of their birthright. They employed several attorneys with the purpose of exploring avenues leading to tribal restoration. In 1993, mixed-bloods met at Bottle Hollow Resort on the Uintah and Ouray Reservation to gather testimony on termination, which they hoped would influence officials in the Department of the Interior to reinstate them to membership in the Ute tribe.[13] The opposition of the tribe doomed that particular effort, but the episode provides evidence that the mixed-bloods were moving toward collective action.

At the same time, a few mixed-blood factions continued to pursue remediation in the courts, filing suits against the UDC in an attempt to regain control over the distribution of assets and treaty rights. Past attempts to regain mixed-blood control of asset management were repeatedly rebuffed. In 1971, for example, Boyden referred to one such group as a "rump revival of an association that has divested itself of all title and authority."[14] In recent years the UDC staunchly defended and asserted its managerial rights before the courts and the BIA. Chris Denver, the director of the UDC, maintained in a 1998 interview that the original Affiliated Ute Citizens had "irrevocably delegated all their authority to the UDC, the Rock Creek Cattle Corporation, and the Antelope Sheep Range Company. And in all the documents I have seen, they have gone out of business. Now, since that time, yeah, they can reorganize, but what authority do they have? In my opinion they don't have any authority."[15] Denver cited as evidence the decision of the Supreme Court in the *Affiliated Ute Citizens* case, and he contended that the UDC has the legal right to act as the joint manager of nondivisible assets with the Ute Tribal Business Committee. In a brief filed with the BIA, Denver noted that groups "calling themselves AUC have sought to challenge the legitimacy of the UDC" without success "for more than twenty-five years," and further, that the "AUC had *permanently* delegated its authority to the UDC." Thus, in the opinion of the UDC director, there is no legally constituted group known as the Affiliated Ute Citizens of Utah.[16]

Naturally, members of the AUC harbor similar views about the illegitimacy of the Ute Distribution Corporation. Dora Van, current president of the AUC, has put forward a number of arguments and legal theories to support her main contention that the UDC is a state

entity "unlawfully injected" into the jointly held management of mixed-blood and Ute tribal assets.[17] In 1996 she and other members of the AUC attempted to legally dissolve the UDC, but the state of Utah took a dim view of her actions and the state attorney general threatened criminal prosecution. The UDC also filed criminal conspiracy charges against the AUC Board of Directors. Van's repeated attempts to intervene in suits involving the UDC also met with rejection by the courts, leading her to turn to Congress for redress. In a letter to Senator Daniel K. Inouye, vice-chairman of the Select Committee on Indian Affairs, she argued that the mixed-bloods had been "systematically extracted" from joint management by the "BIA and others" and that AUC had been "judicially and administratively replaced by a Corporation operating under Utah Law."[18] On that point, at least, both sides readily agree. The legality of these actions remains in dispute.

It appears that the mixed-blood members have reached an impasse in their attempts to regain control of nondivisible assets, manage their treaty rights, or gain compensation for past losses. Many of these individuals have been fighting this battle for so long that they cannot let go of it. Termination has left a mark on them—a mark of victimization that has become a part of who they are. Yet this is not necessarily harmful to their efforts to regain group prerogatives. Sociologists Stephen Cornell and Douglas Hartmann have noted that "ethnic and racial identities can be significant forces in their own right. Although circumstances can construct identities, identities are capable—via the actions they set in motion—of reconstructing circumstances." Putting it another way, they note that ethnic identity sometimes "produces circumstances of its own."[19]

Ultimately this may happen for the mixed-blood Utes, although it would mean a different outcome than restoration to the Ute tribe. Dora Van does not want to seek federal recognition outside the tribe, because, as she said in a May 1999 gathering of the AUC, "Giving up membership means giving up a claim to the tribal assets." Yet she also acknowledged that as a people, the mixed-bloods had been "kicked to death" by the courts. A few of the other AUC members also saw the futility of their situation. Shirley Reed, speaking at the same meeting, urged AUC members to stop filing suits over the UDC management, assets, and similar matters, arguing that the mixed-

bloods need to "go back to the beginning and undo these management structures." She seemed to be asking the surviving mixed-bloods to consider who they are and to ask themselves how they got to be in such a "damn, sad situation."[20]

Much has been written about the causes and effects of termination policy, but very little research in this field has examined the impact of the policy on the racial identity of terminated peoples. In part this is because most termination studies have focused on tribal groups like the Klamath, Menominee, or Southern Paiute Indians, groups that eventually managed to regain federal recognition as Indian tribes. But what of those terminated Indians who have never regained federal recognition? One question that has never been sufficiently addressed concerns the identity status of post-termination Indians. How did they come to perceive themselves? Did they vanish into the larger mainstream of American society, did they persist in their Indian identity, or did they construct a new, post-termination Indian identity? To phrase these questions another way, we might ask if Senator Watkins and his colleagues accomplished their objective with regard to those who never regained federal recognition—that is, were they "successfully" terminated in the sense that they ceased to see themselves as "Indians"? The story of the terminated mixed-blood Utes serves as an interesting case study in this regard because they, unlike other victims of termination policy, remain marginalized by the process. As a result of the Ute Partitioning Act of 1954, the mixed-bloods lost their trust status with the federal government, lost their membership in the Ute tribe of the Uintah and Ouray Reservation, and in some instances even lost their place in the local communities of Utah's Uintah Basin. While most tribal groups subjected to termination have regained tribal status and federal recognition, the terminated Utes have not. Nor are they likely to regain tribal membership given the prevailing political and economic realities of the Uintah Basin.

What the mixed-bloods do possess is an identity forged by shared experiences, common descent, and community bonds. On the most basic level, the social construction of ethnic and racial identity in contemporary America is a negotiated status, determined by the interplay between the external circumstances and

definitions that the group must accommodate and the actions and internal conceptions that group members create for themselves. In this way they become active players in the process, not passive victims.[21] In the Ute case, administrative and legislative action fulfilled the ascriptive aspect of this formula, but Watkins, Myer, Berry, and others failed to consider the extent to which mixed-blood Utes would define their own identity status. In the aftermath of termination they were no longer on the tribal rolls at Uintah and Ouray, but did they still consider themselves to be Indians?

This question needs further refinement, because in 1954 "mixed-blood Ute" identity did not necessarily mean the same thing as "Ute identity," which was clearly not the same as "Indian" identity. Watkins and his cohorts did not appreciate the extent to which people often have multiple layers of ethnic identity. Mixed-blood Utes, for instance, identified themselves as members of extended Ute families or bands (mostly the Uintah Ute band) on the most primary level, but they also saw themselves as Utes, as Indians, and, in a broader sense, as Americans. As Jack Forbes has pointed out, mixed-blood peoples, perhaps more than others, tend to emphasize different identities as time and circumstances demand.[22]

Those charged with the responsibility of administering the termination process and overseeing the partitioning of Ute assets recognized the strong possibility that the mixed-blood Utes might construct a new identity out of their shared historic and cultural inheritance—the process variously termed "social construction" or "ethnogenesis." Boyden, in particular, assumed that the mixed-blood group would exist for a time as an organization bound together by economic rather than cultural interests. One aspect of mixed-blood Ute social construction included the creation of the quasi-tribal economic association of the Affiliated Ute Citizens of Utah, complete with its Board of Directors and corporate structures to manage the cattle, sheep, and mineral assets of the membership.

Beyond the economic considerations, however, Boyden and the early leaders of the mixed-blood group made no attempt to create or maintain group institutions that would persist or regenerate cultural awareness. The mixed-blood planning board may have believed that the shared economic interests would be sufficient to hold the organization together. Or, more likely, they may have expected

that mixed-blood Ute identity would continue only on a symbolic level ("symbolic ethnicity") while the membership gradually assimilated into the dominant society.[23] But the ongoing controversy between the UDC and the AUC over control of mixed-blood assets demonstrates that Boyden, at least, never intended that the mixed-blood group would persist indefinitely. He devised a governing apparatus for the mixed-bloods that would function only as an instrument of dissolution. Once the partitioning of assets had been accomplished, his plan contrived for the AUC board to convey its rights and authority to the UDC and to extirpate itself.

If the mixed-blood Utes have no legal standing, what do they retain? Assessing the efficacy of termination in ending or renewing ethnic status requires an examination of the possibilities. Asking whether termination effectively eradicated Indian identity boldly (or recklessly) raises the question "What makes a person an Indian?" or "What are the attributes of Indianness?" Social theorists have delineated the parameters of ethnicity and race, but it is paramount to note that both are social constructions. The approach applied here is pragmatic, but it begins with the premise, articulated by Michael Omi and Howard Winant, that race is *not* an essence—not something fixed, concrete, and objective—but rather an "unstable and 'decentered' complex of social meanings constantly being transformed by political struggle."[24] In much the same way, Stuart Hall notes that ethnic identities are "constructed historically, culturally, politically" and that "the term ethnicity acknowledges the place of history, language and culture in the construction of subjectivity and identity."[25]

When non-Indians think about historical predicaments like the one the mixed-blood Utes find themselves in, they are as likely as not to think to themselves, "Well, those people are not *real* Indians." They assume that the mixed-bloods are infiltrators—"mostly white" people who tried to pass themselves off as Indians until the "real" Indians expelled them from the tribe. Those who know better, such as the Uintah and Ouray members or the BIA personnel affiliated with the reservation, often take the view expressed by a recent superintendent: "Mixed Bloods are individuals who voluntarily terminated their status as Indians with the United States Govern-

ment. This Agency views the mixed bloods as individuals of Indian blood to whom we have a *special trust relationship* based on indivisible assets outlined in the termination act and subsequent court cases."[26] While it is hardly the case that the mixed-bloods "voluntarily terminated their status" (with very few exceptions), the superintendent came much closer to the mark when he acknowledged the historical and political legitimacy of these people. More significantly, he noted the continuation of the special trust relationship, based on political arrangements made by Congress and the courts.

Perhaps the most important external indices of Indian identity—that is to say, the definitions that people and organizations *assign* to Indians—are those that function on a practical level. Of course, there are almost as many working definitions of Indians as there are applicable government agencies. The Census Bureau, the Indian Health Service, and the Indian Arts and Crafts Act define Indians in their own bureaucratic ways. The BIA, on the other hand, does not define Indians at all, at least not overtly. The bureau provides services to federally recognized tribes whose members are identified on a tribal level, and it maintains a Branch of Acknowledgment and Research (BAR) to determine which groups of Indians qualify for federal recognition. The BAR consequently uses yet another definition for that purpose.

How tribes define themselves depends greatly on the political and economic needs of the tribe, and there are many approaches available. The Oklahoma Cherokees, for example, use a standard of ancestry that allows any descendent of the original enrollees (based on the Dawes Rolls of 1907) to qualify for membership. Not surprisingly, the 1990 census identified 364,072 Cherokees, the largest number of self-identified tribal affiliates in the United States. Why does the Cherokee tribe cast such a wide net over potential members? Because in so doing, the tribe increases its share of available federal funds.

On the other hand, tribes with limited internal resources, such as the Ute tribe of the Uintah and Ouray Reservation, prefer to employ highly restrictive blood quantum standards. In this way they retain control of the oil shale and mineral royalties that support the

tribal membership. Simply put, the larger the membership, the smaller the per capita payments. Thus the Utes opt for exclusionary membership criteria.

Fiscal and social realities dictate that most tribes try to maintain a balance between the poles of future membership growth and immediate economic needs. In so doing they typically rely on the European-derived blood quantum construct described in the foregoing chapters. Tribes use these standards because they actually make sense from a certain political and economic perspective. For example, Melissa L. Meyer has demonstrated a correlation between more exclusive blood quantum restrictions and the ability of tribes to maintain control over their land base.[27] Scientific evidence, on the other hand, does not support the notion that blood or ancestry has any deterministic properties for individual members of a given race, nor does it provide any biologically significant way of determining the degree of ancestry an individual may possess. As we have seen, blood quantum requires an identifying benchmark of ancestors considered to be "100 percent" members, usually derived from tribal censuses taken in the late nineteenth or early twentieth century, but there is no reliable way to determine the supposed ancestral purity of the benchmark population. Someone born today would theoretically have 510 ancestors in roughly eight generations going back to the year 1800. Counting back twenty generations to the year 1500 would include more than a million ancestors.[28] The contemporary American Indian population is such an amalgam of composite indigenous American, European, African, and other ancestries that blood quantum definitions have no real scientific—or *legal*—validity.

The legal fiction of blood quantum has led many scholars, including Joane Nagel, to conclude that *self-identification* is the only logical method for determining ethnic identity. Nagel notes that members of other ethnic or racial minorities are not required to prove their status. She claims that the attendant dissolution of tribal culture which would necessarily follow if members were allowed to self-identify would be offset by the guarantee of demographic survival.[29] But she and other scholars do not say how self-identification standards could be imposed on tribes without violating their right to define themselves.

At the extreme end of the self-identification spectrum is the phenomenon of postmodern Indian identity, a theme that recurs with surprising regularity in academic circles. A recent note on an internet discussion group, for example, defended the phenomenon of white people discovering real or fictive aboriginal roots and eventually "coming out" as Indians. Rather than perceive elements of ethnic fraud in this approach, the author defended the practice on the grounds that the "issue of identity is more complex than just a set of criteria," and further, that "the postmodern world requires that people be able to reinvent themselves several times throughout their lifetime." One can only wonder at the response of the Ute Tribal Business Committee to an application for membership based on that logic.

The problem with this approach is that federally recognized Indian tribes retain *more* than ethnic identity—they also possess unique political rights, historically identified by racial criteria and attendant sovereign powers. One of these powers, buttressed by numerous Supreme Court decisions (e.g., *Santa Clara Pueblo v. Martinez*), is the right of tribal governments to determine tribal membership. It is inconceivable that a conservative community such as the Uintah and Ouray tribe would open its membership rolls to anyone who, for example, wanted a share of their oil shale and gas revenues.

There is, of course, a significant difference between claiming to be an Indian and claiming tribal membership. Individuals presumably possess inalienable rights of self-identification in the pursuit of personal liberty. Problems arise, however, when the rights of individuals intrude into the prerogatives of groups with special rights in society, such as federally recognized Indian tribes. Too often, elements of racial or ethnic fraud emerge, even in small, seemingly personal ways. Most scholars in fields of study related to American Indians can point to individuals who have changed their names or emphasized remote ties to tribal populations in an effort to gain preferential treatment in the hiring or admissions process. One study, undertaken at UCLA in 1993, found that less than 15 percent of the nearly two hundred students who were self-identified American Indians or Alaska Natives on admissions applications were actually enrolled in federally recognized tribes. Only about 5 percent of these self-proclaimed Indians had more than one-quarter Indian ancestry,

and most of the students admitted that they were primarily Caucasian and came from homes with median incomes of $80,000![30]

A number of studies have attempted to identify "real" Indians from the presumptive counterfeit ones. This is a difficult proposition, because as William T. Hagan demonstrated in his pioneering study of Silvester Long Lance, Jamake Highwater, and other "ersatz Indians," fraudulent Indians are likely to appear anywhere and are seldom exposed as such.[31] As we have seen, the story of Ute termination is no exception. In 1953 one "Frank Tom-Pee-Saw," a pseudo-Indian activist and con artist, turned up at Uintah and Ouray and only added to the confusion and discord at that pivotal moment in tribal history. Beyond exposing these obvious frauds, the practice of identifying "real" Indians becomes a murkier proposition. Anthropologist James A. Clifton and his coauthors discovered as much with the publication of their 1990 anthology *The Invented Indian: Cultural Fictions and Government Policies*, which provoked an angry reaction from several Indian scholars, especially Vine Deloria Jr. In his rebuttal, Deloria poignantly asked, "Who is to tell any group of Indians that they must submit meekly to the machinations of Congress or a state or county government and forfeit what they feel in their hearts is their personal and community identity?" And then, even more to the point, he argues: "Definitions of social science, that Indians are only full-bloods, only traditionals, or only people who still speak the tribal language, all fall away before the reality of rural living, experienced in a small Indian community."[32] His point is especially well taken in the communities of Utah's Uintah Basin, where mixed-bloods and tribal members have lived together for decades.

Occasionally, attempts to identify "real" Indians serve the valuable purpose of preserving Indian culture and legitimating tribal authority. In the mid-1960s, Albert Wahrhaftig demonstrated the continued existence of traditional Cherokee communities in eastern Oklahoma, communities that had been overlooked because they did not fit the assimilationist model prevalent in that time and place.[33] But the question "Who are the real Cherokees?" is more relevant to those involved in administering the Individual Indian Money accounts and other rudiments of the federal trust relationship. Otherwise such cultural distinctions manifest less significance. Does an

individual have to speak the Kiowa language to be a "real" Kiowa? Does one have to participate in the Navajo Blessingway ceremony to be a "real" Navajo? These questions make more sense from an anthropological perspective than from a fiduciary one.

Indian identity is unlike other types of racial or ethnic identity in this regard due to the special relationship Indian populations retain with the federal government. In this context, identity refers to tribal connections and legitimacy, based upon the fiduciary logic that undergirds any trust relationship. For trust purposes, Indians are not identified as people who are necessarily racially or culturally distinct, but rather as beneficiaries based on patterns of inheritance. The question so often overlooked centers on the rationale behind the trust relationship: is it based upon wardship and the concomitant inability of Indians to manage their own affairs, or it is based upon contractual obligation? The answer is complicated by the fact that in different eras and historical contexts it has been both, but the thrust of Indian law in modern times has emphasized the latter, more fiduciary interpretation.

What if Indians choose not to retain their language and earlier cultural practices? Do they cease to be "Indians"? More pertinently, should the loss of indigenous cultural markers lead to the removal of trust status with the federal government? The answers are no, and again, no. Indian culture has never been frozen in time, and the government does not possess the right to presume that it does. Indigenous peoples have the right to change as a people—as living, adaptive societies. The U.S. Supreme Court first gave sanction to this view in *Winters v. United States* in 1908. In the words of the Court, "it would be extreme to believe that . . . Congress . . . took from [Indian tribes] the means of continuing their old habits, yet did not leave them the power to change to new ones."[34] Moreover, over the course of the twentieth century the federal courts moved away from definitions of the trust relationship that are based primarily on cultural considerations. Again, this is not wardship but rather a question of inheritance. The mixed-blood Utes, as descendants of the original Ute treaty bands of Utah, should be numbered among the legal inheritors of the rights and benefits that accrue from the loss of former Ute lands along the Wasatch Front. The inhabitants of Salt Lake City, Provo, and Spanish Fork would undoubtedly scorn any

suggestion that they are not entitled to their homes and property along the I-15 corridor just because the Spanish Fork Treaty of 1865, which gave their Mormon ancestors legal claim to the land, was never ratified by the U.S. Senate, or that the treaty no longer applied to them because the original negotiators had long passed from the scene. The non-Indian residents of Utah have undergone a mighty cultural transformation since 1865, yet no one questions the continued validity of the agreement. By the same token, it cannot be reasonably argued that the descendants of the Ute signatories should forfeit their inheritance, promised in exchange for that vast cession of land, simply because they are culturally distinct from their forefathers. It has nothing to do with culture or acculturation or wardship. Rather, it is a matter of birthright, inheritance, and legal obligation.

Perhaps the most measured standard in determining Indian identity for purposes of establishing eligibility for federal trust protection is the method employed by the Federal Acknowledgment Office in the BIA. Groups petitioning for recognition have to meet six specific standards (labeled, in typical bureaucratic fashion, A through F) as outlined in the U.S. Code of Federal Regulations, section 83.7. In brief, petitioners have to demonstrate the following:

[A] That they have been identified as an American Indian entity on a substantially continuous basis since 1900. Several methods of documenting this identification are suggested, including evidence of relationships with federal, state, or local governments; historical or anthropological recognition; and participation in national, regional, or local Indian organizations;

[B] That they have existed as a distinct and continuous community from historical times until the present, utilizing data supporting marriage, social, or economic relationships between members; evidence of discrimination or other social distinctions made by non-members; cultural or religious activity between members; or exclusive or near exclusive geographical proximity.

[C] That they have exercised political authority over members from historical times until the present by providing evidence of political mobilization; demonstration of communication with and

involvement in political processes between members and leaders; and manifestations of political influence or authority at given points in time.

[D] That they have governing documents or traditions establishing membership criteria and governing procedures.

[E] That the membership consists of individuals who have descended from a historical Indian tribe or tribes which combined and functioned as a single entity, as demonstrated by tribal rolls, official membership records, or church, school or other enrollment records.

The current membership of the mixed-blood Ute Indians, the Affiliated Ute Citizens, generally meets the above criteria even though they are not eligible to apply. Standard A, the stipulation that petitioners be "identified as an American Indian entity on a substantially continuous basis since 1900," could be satisfied with reference to membership rolls used before and after Ute incorporation in 1937. The fact that the AUC has only intermittently functioned as a bona fide governing body in the three decades after termination would seem to preclude this claim, except that the regulations make allowance for periods of inactivity or nonrecognition. The regulations state that "evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met."

More problematic in this regard are standards C and D, which require that petitioners have "exercised authority over members from historical times until the present" and that they have "governing documents or traditions establishing membership criteria and governing procedures." But these, too, anticipate periods of inaction by allowing evidence of activity at specific points in time.[35] Prior to termination in 1961, the mixed-blood Utes fell under the governance of the tribal leadership at Uintah and Ouray and then of the AUC Board of Directors, an organization created with the specific purpose of facilitating the separation from the tribe and managing the jointly held assets in range and livestock corporations. In recent years, the terminated mixed-bloods have resurrected the organiza-

tional structure of the "Affiliated Ute Citizens" and battled the non–Indian controlled Ute Development Corporation in an effort to regain control of their lost political and economic assets. They continue to function on the basis of a written constitution and bylaws, with elected leaders.

Standard B also poses problems, but not insurmountable ones. It stipulates that members "existed as a distinct and continuous community from historical times until the present." Although there has been a pattern of dispersal since the termination era, a large core of AUC members still lives in and around the community of Roosevelt, Utah. An effort by a law firm to locate terminated mixed-bloods in 1967 turned up 383 of the original 490 members. Nearly half (47 percent, or 181 individuals) still lived in the reservation and in border communities such as Roosevelt, Vernal, Duchesne, Ballard, La Pointe, and Whiterocks. Another 24 percent (94 individuals) had migrated to the Wasatch Front metropolitan area stretching from Brigham City and Ogden on the north and southward through the Salt Lake Valley to Provo. Taken together, these figures constitute a significant population in reasonable proximity to the Uintah and Ouray Reservation—especially considering that termination meant the loss of employment and access to tribal assets for most of these people.

Standard E is also readily surmountable, as it requires only that the members be descendants of a "historical Indian tribe or tribes which combined and functioned as a single entity." As noted previously, the vast majority of the terminated Utes were members of the Uintah band, a composite band descended from several groups indigenous to central and eastern Utah. Although these Indians had prolonged contact and considerable intermarriage with non-Indian populations, their mixed-blood descendants still possessed significant amounts of Ute ancestry. At the time of the preparation of the final roll, the blood quantum of those selected for termination averaged nine thirty-seconds (or 28 percent), well above the one-quarter Indian ancestry required by the BIA for most federal services. It should be remembered also that the Uintah Utes freely adopted members of neighboring tribes into their own, especially Shoshones and captive Paiutes and Navajos. When ancestry from other tribes

TABLE 5: *Comparison of Ute versus total Indian ancestry possessed by those on the mixed-blood roll, March 1956*

Number of mixed-bloods with degree of *Ute* ancestry		Number of mixed-bloods with degree of *Indian* ancestry	
Degree	Number	Degree	Number
1/16	22	1/16	15
1/8	104	1/8	72
3/16	41	3/16	14
1/4	159	1/4	131
5/16	2	5/16	7
3/8	61	3/8	70
7/16	13	7/16	30
1/2	74	1/2	94
9/16	0	9/16	2
5/8	0	5/8	5
11/16	0	11/16	15
3/4	4	3/4	14
7/8	0	7/8	12
8/8	10	8/8	10
Total:	490	Total:	490

Source: "Final Roll Mixed-Blood" BIA report, Nielson Papers, box 7, folder 20.

is taken into consideration, the average blood quantum of the terminated mixed-bloods rises considerably, from 28 percent to 36 percent—a fairly high measure of ancestry even for many long-established, federally recognized tribes.

In contemporary times, terminated mixed-bloods Utes and their descendants are quick to point out that they retain extensive kinship ties to members of the Uintah and Ouray tribe. This is to be expected, for as Cornell and Hartmann note, when groups and circumstances combine to construct ethnicity, members typically claim "primordial moorings—an anchor in blood ties or common origins." The presence of blood ties, whether genuine or symbolic, "lifts ethnicity above other identities as a defining feature of human communities and as a potential basis of action."[36] In the case of the

mixed-blood Utes, the kinship ties are accepted as genuine even by full-blood relations, who point instead to their relative lack of involvement in Ute cultural traditions as a rationale for termination.

Regardless of their degree of acculturation, almost all terminated individuals are bitter about losing their standing in the tribe while other members of their extended and sometimes immediate family did not. In an interview conducted for this study, Smiley Denver, a terminated Uintah Ute, expressed sentiments that are fairly typical of those whose families were divided:

SD: I was born in 1937, and my sisters and brothers who were born after 1940 were not on the [termination] roll . . . so I'm the only one besides my father who was on the roll. They decided that anybody who was less than half Indian was not on the roll. None of my brothers or sisters were . . . I'm the only one who was. That's caused some problems. . . . It's caused a lot of problems among the mixed-bloods as far as the full-bloods are concerned. There's a lot of people who were terminated who were mixed-bloods who have full-blood families and it's caused a lot of problems there.[37]

More to the point, perhaps, are the sentiments of Keith Burdick, son of a terminated mixed-blood, who characterizes the mixed-bloods as members of his extended family and describes the lingering bitterness that termination created for them:

KB: I don't know anybody who was happy with it. . . . It caused a lot of enemies. It turned brothers against brothers. I know of one brother who enrolled and one who didn't. We had first cousins enrolled. Our families were close, and all the cousins played to together and spent a lot of time together, and I had, ah, [a relation], her Dad was Ottawa, and he worked for the Bureau of Indian Affairs, but because she had some Ottawa blood, they enrolled her in the Ute tribe having no more Ute blood than me. . . . And, of course, when the time comes for the I.I.M. [Individual Indian Money accounts] Indian monies and she gets her thousands and the rest of the cousins don't get anything, we go "Why? Tell us why."[38]

The combination of mixed-blood identification as Indians, continuous existence as a distinct community, possession of political

authority and organic government, and descent from a historic tribe would seem to bode well for either restoration to the Ute tribe or for federal recognition as an independent tribal entity. However, standard F of the bureau's standards for recognition precludes these possibilities. It states unambiguously that in order to qualify for recognition:

> [F] Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.[39]

If that were not enough, the regulations also state that "splinter groups, political factions, communities or groups of any character that separate from the main body of a currently acknowledged tribe may not be acknowledged under these regulations."[40] Why did the authors of the federal acknowledgment legislation specifically deny terminated Indians access to its provisions? Presumably because they did not want mid-level functionaries of the BIA to undo the work of Congress or to usurp its prerogatives.

Nevertheless, the federal acknowledgment standards employed by the BIA may or may not apply with equal force to victims of termination like the mixed-blood Utes, since the U.S. Supreme Court has declared in *Menominee Tribe of Indians v. United States* (1968) that the tribes themselves continue to exist after termination. The United States does not possess the power to dissolve communal bonds that predate the federal union or to decide who is or is not an Indian. Termination legislation provides for the "orderly termination of Federal supervision over the property and members" of the tribe; that is, Congress can terminate *only* the federal-tribal relationship, not the tribe itself, and subsequent Court decisions have affirmed that tribes may redefine themselves ethnologically.[41] The BIA concluded as much at the time of the tribal division. In 1956, in an attempt to understand the provisions of the Ute Partition Act, Commissioner Emmons asked his Solicitor's Office for clarification about the status of mixed-bloods as members of the tribe. He received the reply that "'Mixed-blood' means a *member of the tribe* who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined." In other words, though they were subject to termination, the mixed-bloods remained tribal members.[42] As legal

historian Charles F. Wilkinson defines the issue, "tribalism continues until the members themselves extinguish it. Tribalism depends on a tribe's own will."[43]

Two fundamental and separate processes are at work here. The question of federal recognition is based on the government's fiduciary responsibility to oversee the trust relationship. It has nothing whatever to do with the supposed "authenticity" of tribes or groups of Indians as ethnic or racial entities. Indeed, as Cornell and Hartmann have posited, authenticity is a *social convention*. As usually happens, they argue,

> Some set of group members or outsiders selects a version of an identity and defines it as "authentic," granting it a privileged status. They then use it to distinguish among persons and identities, past and present. The grounds of supposed authenticity, however, are essentially arbitrary. Virtually every people in the world's history has engaged in some sort of contact and interaction with other peoples, visiting, trading, fighting, cooperating, dominating, submitting, and reproducing. They have traded not only goods but also words, ideas, and practices. They have adopted what they found useful and ignored the rest. At what point in that long process of exchange and adaptation have the cultures and identities involved been "authentic," and at what point did they lose their "authenticity"? We would argue that authenticity has been present either at every point or at no point, or simply whenever we or they arbitrarily decide.[44]

Clearly, there is no validity to the argument that the full-blood members of the Ute tribe deserved to retain membership because they were more "authentically Indian" than the mixed-bloods. The real question centers on the trust status, something that had never been an issue until Senator Watkins arbitrarily imposed his ideology on the Ute tribe under the guise of policy. In retrospect, the termination of the mixed-blood Utes emerges as nothing more, functionally, than a *political* maneuver. And it is in the realm of politics that perspectives and beliefs of tribal politicians and federal policy formulators emerge as paramount. This was true in 1954 when Arthur Watkins and Ernest Wilkinson applied their Mormon-inspired ide-

ologies to Indians, and it is true today, as the Affiliated Ute Citizens struggle to define themselves and find recognition from others.

Given that termination originated in an ill-conceived policy, it stands to reason that this injustice should be the subject of a political remedy. Possibly the last remaining legal recourse for the AUC is to seek tribal restoration from Congress, presumably as an independent tribal entity. The language of the Code of Federal Regulations makes it clear that Congress reserves the right to determine the fate of terminated tribes and individuals based on the logic that since it took congressional action to remove the trust status of these Indians, it should require congressional action to restore it. This legal barrier is an unusually difficult one for the AUC for two reasons: first, members of the Ute tribe at Uintah and Ouray would likely oppose such a move on the grounds that land or resources committed to such a reconstituted tribe could come at their expense; and second, members of the Utah congressional delegation are more than likely to oppose such a move. Congress could override the former objection, but the potential for philosophical antagonism from Utah's congressional representatives is a formidable problem, indeed.

It is usually difficult to generalize about a particular state's congressional makeup, but in Utah this is less true. Since the 1970s, a large majority of Utah senators and representatives have been conservative Republicans and members of the Mormon Church. Both points are significant. Conservatives and Mormons alike tend toward the neoconservative interpretations of racial equality, which trumpet the supremacy of individual rights over prerogatives of groups, especially racial minorities. Neoconservatism conveniently abhors prejudice and discrimination while simultaneously opposing governmental initiatives based on categories of race or ethnicity. The idea is to promote a "color blind" society in which individuals may rise as high as their talents and ambitions will carry them. For the political conservatives, however, this stance effectually protects the status quo, since members of racial minorities often start with significant socioeconomic disadvantages. Mormons are also philosophically attracted to neoconservative race ideology, because it coincides neatly with a theology that emphasizes individual salvation based on good works and righteous living.

In either case, the neoconservative political orientation of Utah's recent congressional delegates predisposes them to a negative view of racially construed rights such as those previously held by the AUC. Senator Orrin Hatch, for example, sponsored a bill in 1994 to restore the tax-exempt status of terminated mixed-bloods, a measure that appeared to be quite generous on the surface. In fact, however, the Hatch bill only restored tax exemptions for the approximately one-third of the mixed-bloods who still retained their shares of UDC stock. The legislation was clearly intended to reward individual mixed-bloods who participated in stock ownership, not to protect the rights of terminated Indians as a whole.[45]

More notorious as far as Utah Indians are concerned has been the reputation of Representative James V. Hansen, who won election to the House in 1980 by contending that his predecessor had become "entrenched" in the Washington establishment. Twenty years later, Hansen still represented his northern Utah congressional district. Although he had comparatively few American Indian constituents (the Ute and Navajo reservations are located in other districts), his attitudes toward Indians were revealed to the public in a remarkable episode that took place in 1982. He wrote a private letter to Interior Secretary James Watt, an ideological soul mate, asking if he thought it would be possible to abrogate Indian treaties and discontinue all special benefits to tribes. "We treat the Indians as mentally retarded children," Hansen wrote; he continued: "They are the worst example of what a welfare state can do to individuals." Hansen understood the explosive nature of his inquiry, as he told the secretary that it would be "prudent if this matter not be discussed in very broad circles at this time, as neither of us needs the kind of problems it could bring on our heads."[46]

Unfortunately for the congressman, someone in the Department of the Interior intercepted the letter and forwarded it to an advocacy group known as the Coalition of Native Americans. The coalition decided to publish it when Secretary Watt appeared in Ogden, Utah, at a Hansen fund-raiser. The letter had the expected effect on members of local and national Indian organizations, who saw in it exactly the thing they most dreaded: evidence of a coordinated government conspiracy to revive termination. Hansen re-

sponded to the firestorm of protest by claiming that he had merely raised an issue of interest to many members of Congress, and added, rather ominously, "We feel there's kind of an overreaction to it. . . . If the language is inflammatory, if it hurt someone's feelings, we're sorry, but the problem has to be dealt with."[47] Hansen's letter offered abundant proof that Arthur Watkins still had at least one ideological scion representing the state of Utah in Congress.

In the face of these political handicaps, what is to become of the Uintah mixed-bloods? Do they possess the *will* to retain their sense of community and individual Indian identity in the absence of federal recognition and in the face of local hostility? Federal recognition would, of course, render the question moot by providing a framework for continuity and a method for correcting past injustices.

The basic question of how post-termination Indians perceive themselves has never been addressed, although terminated mixed-bloods have always been willing to share their self-perceptions with attorneys and interested outsiders. The interviews conducted for this study have attempted to augment that record. The conclusions presented here are more suggestive than conclusive and are deserving of more thorough study. It is clear, however, that the Uintah mixed-bloods have lost neither their collective nor their individual sense of being Indians. On the other hand, their feelings toward the Ute tribe and the broader associative identity with American Indians are best described as ambivalent—since these forms of identity had always been somewhat external and artificial to them.

An interesting perspective on this process can be found in a deposition proffered by Lacee Alan Harris, a terminated mixed-blood and son of BIA employee Ab Harris—another of the Ute leaders who played a leading role in promoting termination. When asked if he still felt that it was important for him to be identified as an Indian, he responded:

LH: Well, it's important because that's what and who I am. Although I am of mixed blood descendancy, my father was of mixed blood descendancy, my mother is of mixed blood descendancy, for me

> my whole identity is Ute identity. My great grandparents, my grandparents, my father and I was born and reared on the Ute Reservation, so for me, my whole identity is tied in with the Ute tribe.

Then he elaborated on this point:

> LH: Like I said, although we were terminated, to me termination was a government idea. It was an Anglo idea, if you will. I never felt myself cut off from being a Ute Indian. I may have been cut off from federal services, but I was never cut off from being an Indian, more particularly a Ute Indian.
>
> ATTORNEY: So that even today, despite this termination law and despite this stock that was issued to you and the other things that happened to you in termination, you still consider yourself to be an Indian; is that right?
>
> LH: Oh, most definitely; more specifically a Ute Indian, a Northern Ute Indian of the Uintah Band.[48]

The factors that comprise internal distinctions of self-identification are complex and highly variable. When interview subjects were asked to relate their feelings about what "made them Indian," their answers ranged from the metaphysical to the genealogical. Mac Murdock Sr. expressed it this way: "You know you get this feeling inside of you, you know you're an Indian. And you can never say, 'Hey, I don't want to be an Indian' like if you're not in[side] there. But you get this, ah, where you can hear a *drum*. It's an instinct that's built way down deep, that you *are* an Indian. I don't care what the hell they say . . . Indian comes out of you. I can't hide it."[49]

Most of the mixed-bloods interviewed for this project expressed nearly identical sentiments. Sonny Van, for example, said:

> SV: It's a sad thing, but we *know* we're Indian. Just because a piece of paper says you're not Indian . . . I'm just as black [meaning one with a darker skin] as I was before they ever terminated me, and I have all my Indian beliefs. Matter of fact, I have more Indian beliefs than most of the full-bloods.
>
> WM: What do you think it is [that] makes a person an Indian—do you think it's descent, or do you think it's culture? . . .

SV: I think it's culture, yes. It's something that he inherits through his genes. I don't think it's something that you can just walk in out of the blue and say "I'm an Indian" and expect to be an Indian. It has to be within yourself.[50]

Van's answer reveals some uncertainty about the difference between culture and genetic inheritance, but he clearly agrees with Murdock that Indian identity is an internal phenomenon. A few mixed-bloods responded to the questions in a way which suggests that there are other factors involved as well. Mixed-blood members of the Mormon Church, for example, find that self-identification is sometimes complicated by an internal conflict between their Mormon and Indian selves. In most instances, Mormon identity attenuates the Indian one. Typically, they resolve the internal conflict by accepting Mormon definitions of Indian identity. When asked what makes a person an Indian, whether it is a matter of culture or inheritance, Mormon members of the mixed-blood group invariably claim to be Indians—but also profess belief in the Book of Mormon doctrine that Indians descended from an ancient people known as Lamanites. They identify themselves as Mormons first, and secondarily as Indians or Lamanites.

Charles "Smiley" Denver, a mixed-blood who is also a Brigham Young University–educated Mormon and businessman, minimizes the importance of his Indian ancestry. In the aftermath of termination, he said, "I went on with my life and didn't depend on the tribe for anything, and that's the way it should have been—they [the full-bloods] should have been terminated just like we were." When asked if he considered himself a Ute Indian, he responded that he considered himself "part Indian," and over the course of the interview he pointed out several times that he was "only one-fourth" Indian. In response to the question "What makes a person an Indian?" he answered, "a cultural thing, and federal recognition, I think." Then he added, "Yeah, I'm born with Indian blood, and I have Norwegian blood. I'm a lot more Norwegian than I am Indian." But even Smiley Denver, with his marginal sense of Indian identity, feels strongly that termination violated his rights and the rights of other mixed-bloods.[51]

Smiley Denver's son, Chris, also a Mormon, currently serves as

the director of the Ute Distribution Corporation and is even more outspoken in his support for the concept of termination. When asked about the origins of the current animosity between mixed-bloods and full-blood members of the tribe, he responded this way:

CD: I think the source began with Congress [and the] Ute Partition and Termination Act. A lot of the full-bloods in my opinion have a misconception that the mixed-bloods wanted to be terminated.

WM: I hear that over and over again.

CD: And that's not true. The mixed-bloods didn't want it. Congress was going to terminate the entire Ute Indian tribe. And the animosity comes [from the fact] that the full-bloods were not terminated. And you know, the act itself has never been completed because of that. And you know, we're really upset that that has not happened.

WM: Do you see that as an ultimate solution? The best thing that could happen?

CD: Yes I do. I think the best thing for the state of Utah, Duchesne County, Roosevelt City, is to terminate the Ute Indian tribe. They should be made just like us mixed-bloods.[52]

Richard Curry Sr., a son of past tribal chairman Oran Curry and the brother of Rex Curry, chairman of the Tribal Business Committee during the pivotal termination years, has a different perspective on the identity question. He sees Indian identity as a component of culture and links it to participation in the tribe. For obvious reasons, this is not a popular position among the mixed-bloods, because it essentially validates the efficacy of termination: when Indians are removed from the tribe, they cease to be Indians. But Curry retains closer ties to the tribe than most mixed-bloods, for reasons he explained in an interview:

RC: I'm married. My wife is a full-blood. She's enrolled, and my kids are enrolled. She's an Uncompahgre, so that keeps the Uncompahgre band of my side of the family, because they couldn't enroll under me because I no longer *exist*, so to speak.

WM: Is that a little difficult for you, maybe?

RC: Well . . . [long pause] Certain things are. I've never been out of the tribe—away from the tribe.

He then proceeded to name several members of the mixed-blood group and claimed that they had "very little Indian [ancestry], so they never did participate in the tribe." Instead, he noted, these mixed-bloods married white people and lived in communities off of the reservation. Then he added his own perspective on the question:

RC: And so you begin to wonder, "Where does the Indian start?" Or, "What is the Indian?" Or, "Just how do you be an Indian?" Mac [Murdock] used to always tell me, "If you've got one three-hundred-sixty-forth degree of blood in you, you're Indian." And I couldn't . . I didn't dispute that, and I couldn't figure that out. He always used to say, "When do you stop being Indian?" And that kinda set off a little light in my head: first, to stop being Indian, you gotta be Indian first. And so if you don't *act* like an Indian, and you don't *look* like an Indian, you don't participate in Indian traditions and culture or anything [that] lasts—hey, you can be a full-blood and still not be an Indian.

WM: Interesting. So what you're saying is, you have to, really, essentially, be born into the tribe—you have to come from the tribe to be an Indian?

RC: No, I think you have to be *raised* as an Indian.[53]

Richard remains close to the tribe and tribal functions because of his extensive families ties. Even though the Utes are a matrilineal tribe, his Uncompahgre father had the two sons (Rex and Richard) enrolled in the Uncompahgre band as children, despite the fact that their mother, Elizabeth, was a Uintah. It is not surprising, therefore, that Richard, like his elder brother before him, would emphasize cultural definitions of Indianness. In this way, cultural retention serves to legitimate Uncompahgre hegemony over the reservation, since as a whole the Uncompahgres are less acculturated and have lower rates of intermarriage with non-Indians.

The mixed-blood Uintahs cannot make these claims, so they cling tenaciously to definitions of Indianness that rely on issues of descent and government obligation. Most members of the mixed-blood group insist that they have been illegally disenfranchised from Indian communities that predate the Ute tribe. The older members, in particular, still think of themselves as Uintahs rather than Utes. Outsiders might find this hard to understand, since most of the Uin-

tahs *are* Utes, ethnologically speaking. But the mixed-blood elders do not talk about cultural affiliations as much as they do about communal ones. The Uintahs have existed as a distinct community since their removal to the Uintah Basin in the 1860s, well before the arrival of the Uncompahgres and Whiterivers in following decades. The experiment of creating a "Ute tribe" out of these three disparate and often antagonistic communities was, to paraphrase Lacee Harris, "a government idea," and one that continues to be alien to them, just as it was in 1950 when several mixed-bloods petitioned Arthur Watkins and complained about losing political control of their reservation to the two Colorado bands.

Ultimately, the social construction of mixed-blood identity derives more from tribal descent than from culture retention, but the issue of "legitimacy" is, as we have seen, an arbitrary one anyway. The largely full-blood members of the Ute tribe claim both tradition and descent, and they emphasize the importance of tribal culture while insisting that the mixed-bloods left the tribe voluntarily. Younger members of the tribe, in particular, believe that the mixed-bloods actually *asked* to be terminated.[54] On the other hand, the mixed-bloods themselves emphasize genealogy and political rights. Invariably they cite the fraudulent aspects of the Ute Partition Act and assert that they have extensive kinship ties to people who are members of the Ute tribe.

It should not be surprising that mixed-bloods turn again and again to the *politics* of the issue. Some contend that tribal planners used faulty logic when they relied on the 1955 blood quantum enumeration to terminate them, because they based calculations of ancestry on membership in a Ute tribe that did not historically exist. These mixed-bloods regard the post-1937 Uintah and Ouray tribal government as a bureaucratic fiction never fully accepted by any of the three bands. As Mac Murdock explains it: "See, just back like in 1929, now the Uintah roll—they had strictly a Uintah roll, and a Whiteriver roll, and an Uncompahgre roll. I appear on the Uintah roll. Over here. How can they make me a Ute? There's *no way* they can make me a Ute! I'm *still* a Uintah. I'm on the Uintah roll!"[55]

Maxie Chapoose, a full-blood Uintah, argues that the creation of the Ute tribe violated and continues to violate his rights. "In all of this litigation," he points out, "in reference to a people, 'tribe' is the

only language that was ever used. They never come down and said to the individual 'you and you and you.'" Tribal rights superseded his own, as an individual and a Uintah. Referring to his own difficulties with the tribe, he says: "You sons of bitches . . . you're the ones who fouled me up. You done this to me, tribe—Mr. Tribe. I don't even want to be a part of your damn tribe."[56]

Calvin Hackford seconds these sentiments by pointing out that the government had no right to supersede his Uintah identity with a Ute one, thereby abrogating his Uintah treaty rights. He said, "You can't take an identity that emerged down here in 1937 and 'attach' it to me, and claim [Uintah] rights back in 1906 when it [the Ute tribe] didn't even exist. That's the reason why my identity is to me, very important."[57]

What Murdock, Chapoose, Hackford, and others believe is not much different from the position the mixed-bloods articulated to Senator Watkins in 1950: that the federal government created the Ute tribe and used it to deprive them of treaty rights that originated in their *Uintah* ancestry. The fact that the leaders of the contrived entity known as the Ute tribe belatedly discovered, in 1954, that some of their members were not "Utes" in the same fashion as the Colorado Utes, and then used this discovery as the basis for terminating the trust obligations owed to these people as Indians, only adds to the absurdity of this unhappy episode.

CONCLUSION

The termination of Utah Indians proved to be a classic example of federal policy turned tragically wrong. Envisioned as a method of providing self-sufficiency and acculturation for those inducted into the program, the results invariably showed the opposite effect. The experience of the mixed-blood Utes dramatically illustrates the nature of these unintended consequences. Most worked as ranchers and farmers in the years before the policy was implemented. However, in 1960 a study conducted by the University of Utah found that the Uintah Utes had only twenty-eight remaining farms or ranches. Of these, only fourteen claimed being even close to achieving a level of self-sufficiency.[1] As their economic livelihood was destroyed, the mixed-bloods had little choice but to start life anew.

Perhaps even more shocking was the wanton disinheritance of the mixed-blood Utes from their tribal assets. When initially removed to the Uintah Valley in the years following the Spanish Fork Treaty of 1865, the Uintah Utes were promised title to the entire basin. Nevertheless, the workings of nearly a century of assorted government policies, culminating in termination, rendered their progeny nearly propertyless. Today the poverty and displacement remain pervasive.

Although the four bands of Utah Paiutes never had the assets that the mixed-blood Utes initially possessed, termination worked at least as great a hardship on them. They endured impoverished conditions throughout the 1960s and 1970s. Anthropologist Ronald L. Holt's study of these Indians concluded that termination rendered them totally dependent on outside forces for survival. They lost any recourse to educational and health programs that benefited other tribes. Worse, the steps they had taken toward self-sufficiency in the 1940s were completely negated. Their tribal land base was reduced, and their self-government virtually collapsed. As Holt put it, "When other Indians were crying for civil rights and self-determination during the 1960s, the Paiutes in Utah were only struggling to survive and to retain their identity as Indians."[2]

Nielson, Holt, and the few others who have examined the effects of termination policy in Utah agree that the effects of termination were almost uniformly disastrous for the individuals subjected to it. In this respect their work is similar to broader termination case studies, such as Nicholas Peroff's examination of Menominee termination or Susan Hood's account of the Klamath saga. But what is illustrative about termination in Utah has less to do with the disastrous outcome (which does not appear unusual in comparison to other terminated tribes) than with the unique set of antecedents. In Utah, termination derived from a convergence of three unrelated factors—factors that first appeared in the Utah case and then contributed to the termination of tribes elsewhere.

The first of these was probably accidental. Arthur V. Watkins, a freshman senator from Utah lacking any substantive experience in working with Indians, became the chairman of the Senate Subcommittee on Indian Affairs in 1947. The reasons for this curious selection are unknown; perhaps the Senate leadership simply assigned Watkins because he was a westerner, or perhaps he volunteered for the position. Regardless of the reason, Watkins became the most dangerous of chairmen for Indians because he was an ideologue. His philosophical base stemmed from religious conviction, not personal experience or political considerations. Therefore, unlike most in Washington, he tended to resist the political process and worked around the system in order to avoid compromising his beliefs.

Watkins's religious convictions, underpinned by Mormon doc-

trines regarding Indian origins and destiny, led him to see Indian peoples as a fallen race, ignorant of the truth and deprived of the liberating aspects of civilization. The thing he desired most, therefore, was the rapid and complete assimilation of the American Indians. To his mind, these were noble and justifiable objectives.

As Commissioner Emmons pointed out in the course of the Paiute termination hearings, there were substantial differences between the many Indian tribes residing in the United States. He warned that the government should never attempt to apply the "same yardstick to these many groups and tribes." Yet termination, especially as practiced by Watkins, proved to be exactly that kind of "yardstick." The evidence suggests that the senator either thought all Indians were fit for termination or was unconcerned about their status. If any one thing emerged from the combined experience of the Affiliated Utes and the Utah Paiutes, it was that Watkins relentlessly pursued his own ideological agenda. He consistently portrayed the image of meeting the legal requirements for termination, especially with regard to the stipulations defining consent, without actually giving the Indians any choice.

Watkins's commitment to the policy did not, by itself, make the difference in bringing about termination. If commitment had been the only criterion, then Dillon Myer would have been far more successful that he actually was. What set Watkins apart was that he also possessed *legislative* power. This legislative prerogative constitutes the second of the three factors that brought about termination in Utah. Watkins did not possess broad powers over Indians—Congress would not have accepted termination without tribal consent, and informed tribal consent was entirely lacking. So he sought examples instead. He wanted a few, select Indian tribes that could lead the way, and the tribes and bands of his home state served this purpose sufficiently well.

In 1949 or early 1950, Watkins discovered that he had at his fingertips real, coercive power derived from Senate oversight authority over tribal funds. Most tribes did not have large amounts of money deposited in the federal treasury or ambitious tribal budgets, leaving Watkins without substantive influence over the direction of tribal programs. However, the senator had considerable leverage over the few tribes that had acquired large sums in judgment monies

awarded by the U.S. Court of Claims, because the jurisdictional acts upon which the claims were based stipulated that the tribes could use their judgment funds only in congressionally mandated ways. Thus, Watkins had a tool for compelling tribes to produce development programs that included termination provisions. When countered by opposition, as with both Ute factions, Watkins simply threatened to withhold the money. Congress probably would not have condoned Watkins's blatant use of blackmail tactics, but he avoided congressional scrutiny by working behind the scenes through tribal attorneys and other intermediaries. In the case of the Paiute bands such subterfuge proved unnecessary, as they were too disorganized to offer effective resistance. In any case, his subcommittee chairmanship gave him considerable power over the tribal purse strings.

It also helped Watkins's cause that most members of Congress naturally assumed that the tribes with the greatest resources, especially those with large trust funds in the federal treasury, were the ones most ready for termination. Watkins nurtured this fallacious assumption because it allowed him to pursue legislation for tribes that would have otherwise been considered ill-prepared. In 1947, for example, Acting Commissioner Zimmerman noted that the Utes were among those least ready for termination, but after the Colorado judgment award in 1950 they were reclassified as one of the best-prepared tribes.

Without the Indian claims awards, Watkins would not have had significant legislative power over any Indian tribes. Thus the role played by Watkins's fellow Utahn and brother in the Mormon priesthood, Ernest Wilkinson, constitutes the third factor leading to termination in Utah. Wilkinson's success in winning the spectacular Big Ute Case made him the most successful Indian claims attorney in the country at that time. However, while other claims attorneys might have resisted Watkins's attempts to use award money to blackmail their clients, Wilkinson shared Watkins's religious and political perspectives on Indians and government. Both men agreed that Indians should be compensated for past injustices as a means of removing the federal trust obligation. In fact, Wilkinson's role in producing the 1945 Indian Claims Commission Act probably stemmed from these same motives. He too expected the Utes to use

their judgment award in ways consistent with the objectives of termination. This unexpected cooperation provided the senator with the means necessary to terminate the Indians of his home state.

Ironically, following Watkins's failed bid for reelection in 1958, he received an appointment to serve on the Indian Claims Commission. In 1960 he became chief commissioner, and during his tenure (1960–67) he worked hard to increase the ICC's efficiency and output. The evidence suggests that as he became more familiar with the facts about claims cases, Watkins also became more sympathetic to the injustices suffered by Indians. Even so, he always viewed the ICC as a temporary expedient to settle the accounts as a prelude to assimilation.[3]

The convergence of these factors—Watkins's ideological chairmanship, his coercive power over tribes with large claims awards, and the willing cooperation of Utah claims attorney Ernest Wilkinson—produced the bureaucratic climate conducive to political manipulation. The senator found a similarly auspicious combination of events at the tribal level. Internal factors made the Utes especially vulnerable to external pressures, as the infusion of new money rekindled old antagonisms between the three bands, especially those concerning membership and control of the unpopular IRA-style tribal government. Eventually, all combined to give Watkins the power to effect termination in Utah.

Moreover, many of the operative factors present in the Utah situation were also present elsewhere, suggesting a modification of the existing interpretive framework for understanding termination. It is clear that the interpretive elements posited by Donald Fixico and Kenneth Philp, particularly the role played by returning war veterans and the insufficiency of the existing IRA government at Uintah and Ouray, played a significant role in Utah. However, it is just as clear that the Utah case defies these interpretations with respect to the capricious and pivotal role played by Senator Watkins and his religiously motivated allies on the federal, state, and local levels. The broader, causative forces provided the environment that made termination possible, but Watkins's ideological compulsions drove his program to fruition. Most congressional advocates of termination favored the policy only in principle and generally drew back when confronted with the reality that the tribes themselves would not

consent to it. But Watkins truly believed that he knew what was best for the Indians, whether they offered consent or not.

In fact, the entire Utah termination story is unique in that the converging elements which created it carried over and contributed to the termination of additional tribes. As the studies of Peroff, Hood, and others have demonstrated, Watkins played a major role in terminating the Menominee, Klamath, and other Indian tribes, just as Wilkinson helped these same tribes win judgment awards from the federal government. Thus, in this one sense at least, Arthur Watkins realized his objective: he truly made the Indians of Utah examples of termination.

The Ute termination story is also significant for what it reveals about the impact of termination on Indian identity. When faced with the threat of external pressure and acculturative forces, the Utes and Paiutes did not find common cause in their shared cultural traditions. Instead, threat of termination tore the Ute tribe apart and rendered the Paiute bands powerless. It is true that these Indians had never really functioned on a tribal level anyway, but there is more to the story.

Particularly in the Ute case, termination exacerbated the anxieties and factional fault lines between the three bands *because* the policy centered on the definition of race. Identity construction typically includes criteria to establish boundaries; in this case, however, Watkins and his allies managed to assign boundaries externally by playing upon the animosities that already existed between the bands. In the process, the Uintah band never had the opportunity to assert its own identity criteria.

The racial question tore the tribe apart because the would-be arbiters of the racial division based their work on the fiction that an objective standard of race could be utilized for the purpose at hand. But race is not an essence and is not objectifiable, and therefore the process utilized an arbitrary standard which guaranteed that the members of one or more of the factions would find themselves victims of the process.

Partitioning the Ute tribe *had* to be a political process. The definitions of race that undergirded the division were the product of political calculation. Watkins and his allies within the tribe devised

a formula that would attract a modicum of support from the full-blood group and then shrewdly altered the formula in committee to maximize the number of individuals separated from the tribe. No one bothered with the formality of calling in anthropologists or genealogical or historical experts to give testimony on who the "real" Indians were supposed to be—Watkins understood that the question of race was a political one. Indians could be bureaucratically and arbitrarily defined into and out of existence.

A more enlightened approach to the Ute problem would have taken into consideration the rights of these racially defined peoples as members of discrete groups. Few individuals in Watkins's day thought in terms of group or minority rights, advocates of cultural pluralism not excepted. The dominant racial paradigm in that era still held that nonwhite racial groups were biologically inferior and served to defend the prevailing legal and social institutions of segregation. Neoconservative defenses of the prevailing social order had yet to be articulated, although it is not hard to imagine Watkins subscribing to the idea that Indians should possess rights as individuals in society, not as members of tribally based communities.

Terminationists like Watkins thought of themselves as progressive thinkers because they envisioned a society based on the notion of the equality of the individual, apparently never considering that the legal and political rights guaranteed by treaty provisions and federal law constituted a layer of political rights that transcends the rights of individuals. The federal and territorial agents who negotiated the Spanish Fork Treaty of 1865 never thought of treating Ute Indians as autonomous members of society; rather, they treated with leaders of Ute bands who represented their peoples as distinct groups.

While the Ute case fails to support the more cohesive outcomes of social construction, considerable evidence exists to support the judgment that mixed-blood ethnic identity has been reinforced on a personal level. The majority of mixed-bloods interviewed for this study profess a stronger sense of Indian identification today than they possessed before termination. The younger members of the mixed-blood group, usually children of terminated members—Dora Van, Keith Burdick, Oranna Felter, and several others—now identify themselves primarily or exclusively as Indians.

Keith Burdick's story forms an interesting example of this affinity. The son of an enrolled member of the tribe, born five years before enactment of the Ute Partition Act, Burdick never made it onto the tribal rolls, yet today he manifests a profound sense of personal Indian identity—so much so that he travels the national pow-wow circuit and exhibits his artwork in venues such as the Red Earth Festival in Oklahoma City. His son, Richard Burdick, is a composer and performer of Native American flute music. When asked about his affiliations, Keith Burdick emphasized his cultural roots in this way: "I think, being Indian, you have to have that [Indian] background. You have to be raised knowing that you are. To me, Grandpa told me his little story—he told me about his dad and his mom, and the Indian way of life. That's important to me because I was raised listening to those stories. And I'd like to be a part of that, even though, like I said, we're on the outside looking in, as far as the Ute tribe is concerned. They don't care. But *my heritage* is Indian, and I'm still going to be Indian. I don't care what they say."[4] It is safe to assert that Keith Burdick is not *less* Indian because of termination; if anything, he is more.

Today the mixed-blood group is not cohesive. It is riven with the factionalism and antagonism that one might expect of any group of individuals subject to federal legislation and party to countless lawsuits. Nevertheless, a sense of commonality prevails. According to sociologists Cornell and Hartmann, the bonds that are most important to group solidarity are shared interests, shared institutions, and shared culture.[5] If the mixed-bloods possess one thing in abundance, it is a shared interest or determination to regain what they have lost. They also possess shared institutions in the form of the formal Affiliated Ute Citizens organization that functions sometimes well and sometimes not, but generally in accordance with its constitution and bylaws. And they emphatically *do* share a culture—the majority of mixed-bloods are children of a historic Indian people, direct descendants of a composite band known to history as the Uintah Ute people. They possess levels of ancestry in excess of many well-known, federally recognized tribes. In short, they manage to hold together in spite of almost insurmountable obstacles because they have constructed and maintained a group identity.

It is important to bear in mind these and other realities about

the Utah termination episode. The most significant factor is that Senator Watkins and his accomplices implemented termination legislation illegally. The critical legislation affecting the mixed-blood Utes and Paiutes (P.L. 671 and P.L. 672, respectively) contains language consistent with the intent of Congress, which stipulated that those subjected to termination had to give their consent to it. Despite the controversies surrounding votes at the Hotel Newhouse and in other Paiute meetings, as well as the General Council meeting of the Ute tribe at Fort Duchesne, sufficient evidence exists to prove that Watkins either lied about receiving Indian support for his program or else misconstrued it. The pivotal Ute meeting, held on 31 March 1954, is noteworthy in several particulars, but most especially with regard to the nearly complete absence of those subjected to termination: the Uintah Utes. Had anyone on the Senate Subcommittee on Indian Affairs bothered to examine the issue, they might have wondered how the mixed-bloods could give consent to termination when they were not present at the meeting that supposedly voted in favor of it.

Great harm has come from all of this. Lives have been ruined and families divided. Circumstantial evidence suggests that many surviving mixed-blood Utes live on welfare or state assistance. It is terribly ironic that in a time when termination is almost universally regarded as a failure, the mixed-blood Utes remain behind as the discarded and forgotten victims of a mistaken policy.

Over the past three decades, the government of the United States has offered restitution to all of the major tribal groups subjected to termination and has implemented a recognition process whereby other forgotten descendants of Indians have received federal recognition. The Mashantucket Pequot tribe of Connecticut, for example, won direct federal recognition from Congress in 1983, despite the fact that cultural and genealogical ties of current members to the historic Pequot tribe are tenuous at best. Today the Mashantucket Pequots, owners of the Foxwoods Casino, are widely regarded as the wealthiest and most powerful Indian tribe in America. They stand as a classic example of the politicization of race.

The terminated mixed-blood Utes, meanwhile, can only shake their heads in disbelief when confronted with such vagaries of federal policy. They have no thoughts of gaining wealth or privilege

from the restitution of their federal trust status, even if such eventualities were possible in the Mormon Church–dominated state of Utah. What they want is the recognition that they, too, are the cultural and lineal heirs of the Uintah Ute people. And, of course, they want justice.

NOTES

Introduction

1. U.S. Congress, Senate, *Termination of Federal Supervision over Certain Tribes of Indians*, Joint Hearing before the Subcommittees of the Committees on Interior and Insular Affairs on S. 2670 and H.R. 7674, 83d Cong., 2d sess., 15 February 1954, 41.
2. House Concurrent Resolution 108, 83d Cong., 1st sess. (1953).
3. Brown, "Métis, Halfbreeds, and Other Real People," 21–22.
4. Zimmerman, "Role of the Bureau of Indian Affairs," 40.
5. Myer, "Indian Administration," 198.
6. Myer, "Indian Administration," 200.
7. Emmons, "U.S. Aim," 42.
8. Watkins, "Termination of Federal Supervision," 47.
9. Watkins, "Termination of Federal Supervision," 49.
10. Collier, "United States Indian," 49–51.
11. La Farge, "Termination of Federal Supervision," 41–42.
12. Cohen, "Americanizing the White Man," 177–78.
13. Cohen, "Colonialism: U.S. Style," 17.
14. Philp, *Termination Revisited*, xi–xii.
15. U.S. Congress, Senate, *Officers and Employees of the Federal Government*, Hearings before the Committee on Civil Service on Senate Resolution 41, Parts 1–4, 80th Cong., 1st sess., 1947, 90.
16. Senate, *Officers and Employees of the Federal Government*, 130.

17. Philp, *Termination Revisited*, 171.
18. Watkins to Curry, 18 February 1954, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington, DC.
19. Fixico, *Termination and Relocation*, 93.
20. Peroff, *Menominee Drums*, 60.
21. Cornell and Hartmann, *Ethnicity and Race*, 48–71.
22. Barth, *Ethnic Groups and Boundaries*, 10, 32–33.
23. Nagel, *American Indian Ethnic Renewal*, 114.
24. Cornell, *Return of the Native*, 84–85.
25. Clifton, "Factional Conflict," 189–202.
26. Clifton, "Factional Conflict," 208.
27. Compare, e.g., the assimilationist tendencies evident in Robert E. Park's introduction in Louis Wirth's *The Ghetto* (Chicago: University of Chicago Press, 1956) with the earlier, pluralistic interpretation of Horace Kallen, *Cultural and Democracy in America* (New York: Boni & Liveright, 1924).
28. Quoted in Getches et al., *Cases and Materials on Federal Indian Law*, 208.
29. For an articulation of racial formation theory, see Omi and Winant, *Racial Formation*, 57–69.

1. *The Junior Senator from Utah*

1. Deposition of John S. Boyden Sr., 4 October 1977, *Hackford v. First Security Bank*, U.S.D.C., District of Utah, Docket no. 75-278, pp. 3–4, Parker M. Nielson Papers, accession 1642, box 26, folder 7, Manuscripts Division, Special Collections, University of Utah Marriott Library, Salt Lake City.
2. Account of Nora Watkins Cook, cited in Nedra Watkins Reese, "Arthur Vivian Watkins and Andrea Rich Watkins: A Brief History of Their Lives [1981]," 9, TS [photocopy], Special Collections, Harold B. Lee Library, Brigham Young University, Provo UT (hereafter cited as Reese, "Brief History").
3. "Journal of Arthur V. Watkins while in the Eastern States Mission, commencing June 11, 1907," cited in Reese, "Brief History," 15.
4. The Uintah Reservation had been allotted in 1905 in a very high-handed manner. Tracts of land were simply assigned to Utes in the order that their names appeared on an opposite list, and the remaining land was quickly thrown open to homesteaders such as Watkins's par-

ents. The entire process was so shabby that Commissioner Francis E. Leupp was moved to deplore it in his 1907 report to the secretary of the interior. For the most complete treatment of this subject, see Fuller, "Land Rush in Zion."

5. "Personal History of Andrea Rich Watkins," cited in Reese, "Brief History," 46.
6. In her biography of her parents, Nedra Watkins Reese asserted that Watkins edited the *Vernal Express* for a period of six months in 1914, although it appears more likely that he worked as news editor for only about half that time. His name was listed on the masthead from 8 April to 10 July 1914 ("Brief History").
7. "Why Not a Law to Punish the Indians?" *Vernal Express*, 22 May 1914, 1. While there is no conclusive proof that Watkins authored this and other cited articles from the *Express*, as news editor he was at least responsible for the editorial content. Moreover, persuasive circumstantial evidence exists that he *did* write them. In the above-mentioned story, to give but one example, the author not only discussed legal issues involved with a Tucson grand jury but went on to cite (by name and in rather technical detail) the relevant Utah case law. Presumably this would have been beyond the capabilities of the few other employees of the newspaper. Watkins, on the other hand, had only recently graduated from Columbia Law School, passed the Utah bar exam, and was struggling to establish his reputation as a practicing attorney.
8. "Came to Vernal to Stop Sun Dance," *Vernal Express*, 10 July 1914, 1. See also "Indians Refuse to Obey Orders," *Vernal Express*, 3 July 1914, 1, and "Indians May Give Sun Dance After All," *Vernal Express*, 26 June 1914, 1.
9. "Want Ft. Duchesne Ceeded [*sic*] to Utah," *Vernal Express*, 12 July 1914, 1.
10. Reese, "Brief History," 17.
11. "Hatreds Should Be Kept Out of Political Campaigns," *Orem-Geneva Times*, 9 May 1946, 1. It is interesting to note that in another article on the same page, William L. Baker, Watkins's rival for the Republican nomination, argued that blame for the "ills of the nation" resulted chiefly from the "lawless elements" in labor unions. Baker felt that the best solution was to "strictly control" the trade unionists. It is impossible to know if Watkins's sanctimonious lecture on the evils of class and economic warfare was directed specifically at these comments of his Republican opponent, a mere coincidence, or the construct of partisan

newspaper editors. Nevertheless, the contrast between the two articles is striking.

12. See, e.g., the paid political advertisement titled "Personal Statement of Arthur V. Watkins," *Salt Lake Tribune*, 3 November 1952, 11.
13. Paid political advertisement titled "Watkins Is the Man!" *Salt Lake Tribune*, 2 November 1946, 6.
14. "Arthur V. Watkins to Be Honored at Community Reception Oct. 30," *Orem-Geneva Times*, 24 October 1946, 1.
15. Paid political advertisement titled "Vote for Orem's Candidate for U.S. Senator," *Orem-Geneva Times*, 15 August 1946, 2.
16. "Demo Senator Flays GOP War Politics," *Salt Lake Tribune*, 2 November 1952, B-1.
17. "Granger Acts to Erase 'Infamous Lie,'" *Salt Lake Tribune*, 2 November 1952, B-1.
18. "What of the Future of America?" delivered 5 July 1947, text published in the *Congressional Record*, 80th Cong., 1st sess., 1947, A3332.
19. Shipps, *Mormonism*, 128.
20. Alexander, *Mormonism in Transition*, 257.
21. Quinn, *Mormon Hierarchy*, 67.
22. Quinn, *Mormon Hierarchy*, 360.
23. Shipps, *Mormonism*, 137.
24. "Ward Teachers Message," *Deseret News*, Church Section, 26 May 1945, 5. Also included in the church-published *Improvement Era*, June 1945.
25. Gottlieb and Wiley, *America's Saints*, 236–37.
26. Ostling and Ostling, *Mormon America*, 220–58, 351–71.
27. The Mormon Church has experienced several profound doctrinal shifts. See, e.g., the changing nature of doctrines concerning polygamous marriage, the exclusion of the priesthood from those of African ancestry, changes in the temple ceremony, and many other issues noted in Alexander, *Mormonism in Transition;* Quinn, *Mormon Hierarchy;* and Ostling and Ostling, *Mormon America;* among other accounts of Mormon history.
28. McConkie, *Mormon Doctrine*, s.v. "Godhead," 320.
29. McConkie, *Mormon Doctrine*, s.v. "Unity," 814–15.
30. Ostling and Ostling, *Mormon America*, 237.
31. Steve Benson, "Goodbye to God: Editorial Cartoonist's Journey from Jesus to Journalism—and Beyond," available on the World Wide Web at http://www.lds-mormon.com/benson2.shtml.

32. Reese, "Brief History," 114.
33. At the time, Watkins chaired the Senate Immigration Committee and President Eisenhower wanted the bill passed as an anti-Communist measure. Yet Watkins did not want to allow postwar refugees into the country, and he sought McKay's views on the matter. Watkins apparently knew that McKay, a true conservative, harbored concerns about possible political subversives and Communist infiltrators. McKay responded that he "did not feel too well about the Italians" and warned that all of the immigrants should be "examined closely before entering," but nevertheless he told Watkins to support the bill out of deference to Eisenhower. Diary of David O. McKay, entry for 15 May 1953, Accession 668, box 9, folder 6, Manuscripts Division, Special Collections, University of Utah Marriott Library, Salt Lake City UT.
34. McKay questioned Ritter's integrity and wanted Watkins to block the judicial confirmation. It is interesting to note that several years later Judge Ritter presided over litigation arising from the termination of the mixed-blood Utes and the partitioning of the Uintah and Ouray Reservation. John Boyden, meanwhile, played a major role in the termination of the Utah Indians as explained herein.
35. See, e.g., 2 Nephi 30:6. The wording in this and similar verses states that the Lamanites would eventually become a "white and delightsome" people. Current editions of the Book of Mormon render this phrase "pure and delightsome."
36. McConkie, *Mormon Doctrine*, s.v. "Races of Men," 616. McConkie's entry for "Caste System" reads as follows: "However, in a broad general sense, caste systems have their root and origin the gospel itself, and when they operate according to the divine decree, the resultant restrictions and *segregation* [emphasis in the original] are right and proper and have the approval of the Lord. To illustrate: Cain, Ham, and the whole negro race have been cursed with a black skin, the mark of Cain, so they can be identified as a caste apart, a people with whom the other descendants of Adam should not intermarry" (114).
37. 2 Nephi 5:21, 24.
38. Enos 20.
39. Senate, *Officers and Employees of the Federal Government*, 76–77.
40. Senate, *Officers and Employees of the Federal Government*, 90–91.
41. Senate, *Officers and Employees of the Federal Government*, 90–91.
42. Senate, *Officers and Employees of the Federal Government*, 119.
43. Senate, *Officers and Employees of the Federal Government*, 129.

44. Senate, *Officers and Employees of the Federal Government*, 130.
45. Senate, *Officers and Employees of the Federal Government*, 480.
46. Senate, *Officers and Employees of the Federal Government*, 480.
47. Senate, *Officers and Employees of the Federal Government*, 480.
48. The inclusion of the Turtle Mountain Chippewas in this category raises several questions, in that they lived in extreme poverty and, according to House committee reports, were without "visible resources at all." Some researchers have suggested that the Turtle Mountain group was considered for termination on the basis that they might be relocated to better lands. As it turned out, they were not subjected to the termination process. See Charles F. Wilkinson, "The Passage of Termination Legislation," in American Indian Policy Review Commission, *Report on Terminated and Nonfederally Recognized Indians* (Washington DC, 1976), 1633.
49. Senate, *Officers and Employees of the Federal Government*, 544.
50. It should also be pointed out, however, that Assistant Commissioner Zimmerman did present to the Civil Service Committee exhibits that consisted of draft legislation to transfer jurisdiction over North Dakota Indians to that state, as well as sample termination bills for the Klamath, Osage, and Menominee tribes. See Senate, *Officers and Employees of the Federal Government*, 547, 556–63.
51. U.S. Congress, House, *Hearings on H.R. 2958, H.R. 2165 and H.R. 113*, House Subcommittee on Indian Affairs of the House Committee on Public Lands, 80th Cong., 1st sess., 1947.
52. *Congressional Record*, 80th Cong., 1st sess., 15 December 1947, 11356.
53. *Congressional Record*, 80th Cong., 1st sess., 15 December 1947, 11356.
54. C. F. Wilkinson, "Passage of Termination Legislation," 1633 n. 65.
55. See "Acting Commissioner's Circular 3752" (5 May 1948) and "Circular no. 36575" (28 May 1948), Numbered Circular File, RG 75, National Archives, Washington DC.
56. Forrest R. Stone to William Zimmerman Jr., 11 October 1948, RG 75, BIA, accession 57A-185, box 196, file 3069-49-150, National Archives, Washington DC.
57. Stone to Zimmerman, 11 October 1948.
58. John H. Provinse to Forrest R. Stone, 19 October 1948, RG 75, BIA, accession 57A-185, box 196, file 3069-49-150, National Archives, Washington DC.
59. Commission on Organization of the Executive Branch of the Govern-

ment, *A Report to the Congress on Social Security, Education, and Indian Affairs*, March 1949, 63.

60. Commission on Organization, *Report to the Congress*, 65–76.
61. Watkins, "Termination of Federal Supervision," 47.
62. La Farge, "Termination of Federal Supervision," 42.
63. Uintah and Ouray Indians to Watkins, 29 January 1950, Nielson Papers, box 16, folder 9.
64. Uintah and Ouray Indians to Watkins, 29 January 1950.
65. Author interview with Calvin Hackford, Mac Murdock Sr., Jewel Christensen, Maxie Chapoose, and Orrana Felter, 5 August 1998, Roosevelt UT.

2. *Ernest L. Wilkinson and Eighteen Million Dollars*

1. "Biographical Sketch of Ernest L. Wilkinson," 3, Wilkinson Presidential Papers, Special Collections and Manuscripts, Harold B. Lee Library, Brigham Young University, Provo UT (hereafter cited as Wilkinson Presidential Papers).
2. Deem and Bird, *Ernest L. Wilkinson*, 186.
3. E. L. Wilkinson, *Brigham Young University*, 2:522.
4. Deem and Bird, *Wilkinson*, 196.
5. Deem and Bird, *Wilkinson*, 196.
6. Deem and Bird, *Wilkinson*, 198.
7. Roosevelt had previously vetoed bills similar to the Ute Jurisdictional Act. In a later address to the students of the J. Reuben Clark Law School at Brigham Young University, Wilkinson explained how it was that the president signed the bill. He said that at his request, Ickes sent a telegram to Roosevelt urging him to sign the bill. Tragically, on the same day that the telegram arrived, Ickes's wife was killed in an automobile accident on the Navajo reservation. Wilkinson theorized that Roosevelt may have signed the bill out of sympathy to his friend. See Address of Ernest L. Wilkinson to Students at the J. Reuben Clark Law School on 22 September 1977, "How to Make a $2,800,000 Fee," Wilkinson Presidential Papers, 4–6.
8. Deem and Bird, *Wilkinson*, 202.
9. Testimony of Ernest L. Wilkinson in U.S. Congress, House, *Creation of Indian Claims Commission*, Hearings before the Committee on Indian Affairs, 79th Cong., 1st sess., on H.R. 1198 and H.R. 1341, 2–3 March and 11, 14 June 1945, 83.
10. House, *Creation of Indian Claims Commission*, 81–82.

11. The Department of Justice contended, in an attempt to pressure Congress into curtailing Indian claims, that tribal compensation for cases already in the Court of Claims could reach as high as $3.5 billion. Wilkinson's testimony completely refuted this assertion. After rather blandly noting that he had read "nearly every Indian case decided by the Court of Claims," Wilkinson presented detailed charts demonstrating that over the course of fifty-five years of litigation, the total funds recovered by tribes amounted to no more than $30,961,495.38—a figure which amounted to .00006 of 1 percent of the annual federal budget in 1945. See "Extract of Statement of E. L. Wilkinson before Subcommittee of the Committee on the Judiciary on February 14, 1940, in Opposition to S. 3083," inserted into House, *Creation of Indian Claims Commission*, 93–101.
12. House, *Creation of Indian Claims Commission*, 81.
13. Wilkinson also noted that he sympathized with the growing congressional sentiment "not to set up a great horde of commissions," informing Representative Arnold that he had "great respect for that viewpoint." See House, *Creation of Indian Claims Commission*, 87.
14. Wilkinson defined "unconscionable consideration" as situations where Indians were defrauded, to cite one example, by receiving payment for lands at rates "unconscionably" lower than market values. "Offsets" denoted funds paid to tribes for purposes unrelated to claims cases, which the government routinely deducted from the amounts awarded in decisions favorable to the tribes. The term *res judicata* means, in this connotation, that the government could deny otherwise valid claims of the tribes if it could prove that the tribes had had the opportunity to include the claim in an earlier case but failed to do so.
15. Deem and Bird, *Wilkinson*, 161.
16. Rosenthal, *Their Day in Court*, 90–91. For the most comprehensive account of Wilkinson's involvement in this process, see Deem and Bird, *Wilkinson*, 161–68.
17. Robertson to Wilkinson, 26 August 1946 (second letter quoted herein), Nielsen Papers, accession 1642, folder 18.
18. Report, dated 17 August 1946, of Appah, Murray, and Curry on their trip to Washington to witness the signing of the ICC. Nielsen Papers, accession 1642, box 3, folder 28.
19. See, e.g., Wilkinson's recitation of injustices to Indians in "Extract of Statement of E. L. Wilkinson before Subcommittee of the Committee

on the Judiciary on February 14, 1940, in Opposition to S. 3083," inserted into House, *Creation of Indian Claims Commission*, 93–97.

20. Deem and Bird, *Wilkinson*, 206–7.
21. Deem and Bird, *Wilkinson*, 215–19.
22. Deem and Bird, *Wilkinson*, 221.
23. E. L. Wilkinson, *Brigham Young University*, 2:522.
24. Wilkinson's appointment (in a sense a "calling," as such actions are known within the Mormon Church) came on 15 July 1950, following his recommendation by the Finding Committee and the subsequent unanimous approval of the church leadership. Wilkinson already had a long history of performing service for the church, and most committee members and church leaders undoubtedly knew him well. However, the Finding Committee appears to have made its selection during the preceding months of May and June—exactly at the time Wilkinson achieved notoriety for his prosecution of the Ute claims, a development that may have tipped the odds in his favor. Announcement of the $31,938,473 judgment—the largest award ever made to a tribe by the U.S. Court of Claims at that time—was made on 13 July, two days before Mormon Church president George Albert Smith called Wilkinson and offered him the position.
25. *Confederated Bands of Ute Indians v. The United States*, 687. Transcript of testimony taken before Commissioner W. Ney Evans relating to the determination of attorney's fees, October–November 1950, Ernest L. Wilkinson Papers, Archives, Special Collections and Manuscripts, Harold B. Lee Library, Brigham Young University, Provo UT (hereafter cited as Wilkinson Papers).
26. Newspapers around the country took notice of the remarkably large fee. See, e.g., "Indian Case Lawyers Get $2,800,000," 7 November 1951, *Washington Post*. Other papers published on that date carrying stories on Wilkinson's fee included the *Washington News*, *New York Times*, and *New York Herald Tribune*. Most of the stories noted that Wilkinson was to receive only half of the fee, with the rest to be shared with seventy other lawyers associated with the case. The *Post* article also noted that Wilkinson would only receive $700,000 of that amount, with the balance going to income taxes.
27. "Two Capital Hearings Set to Air Rules for U.S. Indians' Lawyers," 9 November 1951, *New York Times*. The *Times* noted that "millions" were being awarded in Indian claims cases and cited Wilkinson's $2.8 million fee as an example.

28. "Annual Report to Congress—draft copy," 22 December 1954, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
29. "For Publication When Judgments Are Entered," press release prepared by the Wilkinson, Cragun and Barker law firm, 8 June 1950, Wilkinson Papers.
30. "For Publication When Judgments Are Entered."
31. See La Farge to Wilkinson, 8 June 1950, and Wilkinson to La Farge, 16 June 1950, Wilkinson Papers.
32. Wilkinson did not accept any compensation for his services at Brigham Young University during the first thirteen years of his administration, choosing instead to support himself and his family with his legal practice.
33. Wilkinson worked in conjunction with the firm of Dwight, Harris, Koegel and Caskey in prosecuting ten separate claims against the United States on behalf of the Menominee tribe of Wisconsin. Department of Justice attorneys settled these cases in 1951. He also represented the Klamath Indians and prosecuted several claims for that tribe before the ICC, all of which were favorably decided between 1964 and 1977. The Turtle Mountain band of Chippewa Indians retained the Wilkinson, Cragun and Barker firm following the failure of other counsel to win a jurisdictional act. Wilkinson and his partners moved the case to the ICC and eventually obtained favorable judgments. Wilkinson also represented several other tribes before both the Court of Claims and the ICC, including the Osage, Shoshone, Nez Perce, Crow, Northern Cheyenne, Blackfoot, Gros Venture, Yankton Sioux, Confederated Salish and Kootenai, and several California Indian groups.
34. Wilkinson to Watkins, January 1947, Wilkinson Papers.
35. E. L. Wilkinson, *Brigham Young University*, 2:533.
36. *Congressional Record*, 79th Cong., 1st sess., 24 May 1945, 7.
37. Ernest L. Wilkinson, "The Changing Nature of American Government from a Constitutional Republic to a Welfare State," 10. An address to the student body of Brigham Young University, 21 April 1966, copy in the collection of the J. Reuben Clark Law School Library, Brigham Young University, Provo UT.
38. "Magazine Lists Church Service of Utah Solon," *Deseret News*, 12 July 1950, Church News section.
39. "Let's Give Indians a Bill of Rights," *Deseret News*, 6 February 1952, Church News section, 10.

40. Wilkinson to Kimball, 30 July 1952, box 63, folder 3, Wilkinson Presidential Papers.
41. In a letter to one of his deans, Wilkinson noted that the "Ute Indians in eastern Utah not only have about $17,000,000 which I was responsible for them obtaining, but fortune has now favored them with the discovery of valuable oil deposits and they have this year so far obtained $2,000,000 in oil royalties. There are evidences at the present time that they may obtain as much as many millions each year as oil royalties. In this situation I am most anxious that with my limited time and your help we may help out these Indians just as much as possible in the hope that they may in time make a very substantial contribution to the Brigham Young University. My own feeling is that if it is handled properly we might get as much as half a million dollars." See "Memorandum: Ernest L. Wilkinson to Dean Edwards," 30 May 1952, box 63, folder 3, Wilkinson Presidential Papers.
42. *Ute Bulletin*, 31 August 1951, RG 75, BIA, accession 57A-185, box 196, file 041, National Archives, Washington DC. This edition of the tribal newsletter described the reason for agreeing to share the Colorado judgment between the three bands.
43. Minutes of the General Council meeting held at the Uintah and Ouray Agency, Fort Duchesne UT, 29 May 1950, 10. Copy in possession of the author.
44. Minutes of the General Council meeting, 29 May 1950, 2.
45. As everyone present realized, the vast majority of mixed-blood members were affiliated with the Uintah band. See Minutes of the General Council meeting, 29 May 1950, 6.
46. Minutes of the General Council meeting, 29 May 1950, 7.
47. The Uintah claim, based on the unfulfilled provisions of the Spanish Fork Treaty of 1865 (and never ratified by the U.S. Senate), resulted some ten years later in a judgment of $7.7 million.
48. Minutes of the General Council meeting, 29 May 1950, 6.
49. Minutes of the General Council meeting, 29 May 1950, 7.
50. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954," RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
51. "Ute Ten Year Development Program," 2, RG 75, BIA, accession 59A-643, box 86, file 17541, National Archives, Washington DC.
52. *Ute Bulletin*, 31 August 1951.
53. The resulting bill (H.R. 3795) took the form of a compromise between

the Wilkinson firm and the Department of Justice. Department officials added an amendment to the bill stipulating that "none of the funds involved herein shall be credited or distributed to the Ute Indian Tribe . . . until the Uncompahgre and White River Bands present to the Secretary of the Interior a release satisfactory to him relieving the United States of any liability resulting from inclusion of the Uintah Band in the disposition or use of said funds." In other words, even though Department of Justice attorneys took the position that the United States was not a party to this "share and share alike" agreement, they demanded (1) the very agreement as a condition of the settlement and (2) a release stating that the government was not a party to it. Otherwise, the secretary of the interior would withhold the judgment money. Glen A. Wilkinson to John S. Boyden, 19 June 1951, Wilkinson Papers.

54. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."
55. Meeting minutes, Ute Tribal Business Committee, 26 July 1950, RG 75, BIA, accession 57A-185, box 197, file 19790-50-054, National Archives, Washington DC. There is little question that the ordinance came before the Tribal Business Committee at the same meeting Wilkinson attended. The ordinance states that it was passed at the same "Special Meeting" described in the minutes and was signed by the same four committee members noted in the minutes to be in attendance. Compare Meeting minutes, Ute Tribal Business Committee, 26 July 1950, listed above, with "Ordinance," Uintah and Ouray Tribal Business Committee, 26 July 1950, RG 75, BIA, accession 57A-185, box 196, file 13916, National Archives, Washington DC.
56. Curry to Chapman, 30 November 1950, RG 75, BIA, accession 57A-185, box 196, file 13916, National Archives, Washington DC.
57. Curry to Chapman, 30 November 1950.
58. Resolution of the Uintah and Ouray Tribal Business Committee, 30 June 1950, RG 75, BIA, accession 57A-185, box 196, file 13916, National Archives, Washington DC.
59. "Memo," W. B. Benge, 28 July 1950, RG 75, BIA, accession 57A-185, box 196, file 13916, National Archives, Washington DC.
60. Bumgarner to the Secretary of the Interior, 25 September 1950, RG 75, BIA, accession 57A-185, box 196, file 19040, National Archives, Washington DC.
61. Legal Opinion, rendered by Wilkinson, Cragun and Barker, 19 No-

vember 1947, RG 75, BIA, accession 57A-185, box 196, file 13916, National Archives, Washington DC. The BIA later took exception to this interpretation of the IRA, claiming that the section in question was not intended to "control quantum of Indian blood for tribal membership" but was instead designed to assist Indians living off the reservation to qualify for IRA benefits. See also Edwin E. Ferguson to Glen A. Wilkinson, 29 June 1951, RG 75, BIA, accession 57A-185, box 196, file 13916, National Archives, Washington DC.

62. Bumgarner to the Secretary of the Interior, 25 September 1950.

3. The Three-Year Program and Economic Blackmail

1. "Statement of Reva Beck Bosone, (D) Utah, Answering Criticism of H. J. Res. 490," 26 September 1950, Reva Beck Bosone Papers, MS 127, box 17, folder 4, Manuscripts Division, Special Collections, University of Utah Marriott Library, Salt Lake City UT.
2. *Congressional Record*, 82d Cong., 2d sess., 27 July 1950, 11255–56.
3. "Statement of Reva Beck Bosone, (D) Utah, Answering Criticism of H. J. Res. 490," 26 September 1950.
4. Collier to Chapman, 4 September 1950, Bosone Papers, MS 127, box 17, folder 1.
5. Collier to Chapman, 4 September 1950.
6. Collier to Chapman, 4 September 1950.
7. John Collier, "Justice for a Minority," circular letter of the Institute of Ethnic Affairs, 1 September 1950, Bosone Papers, MS 127, box 17, folder 1.
8. *Congressional Record*, 82d Cong., 2d sess., 15 December 1950, 16603–4.
9. "Statement on H. R. Res. 490, in Answer to Senator Watkins," 20 December 1950, Bosone Papers, MS 127, box 17, folder 4.
10. Collier to Chapman, 4 September 1950.
11. Drinnon, *Keeper of the Concentration Camps*. Drinnon's biography offers the best, if a somewhat controversial, overview of Myer's administrative career. The author contends that Myer was primarily motivated by what he calls "traditional racism"—the "habitual practice by a people of treating, feeling, and viewing physically dissimilar peoples—identified as such by skin color and other shared hereditary characteristics—as less than persons" (xxvii).
12. Cohen, "Erosion of Indian Rights," 383–84.

13. Cohen, "Erosion of Indian Rights," 355.
14. Cited by Cohen in "Erosion of Indian Rights," 383.
15. Commissioner of Indian Affairs, *Annual Report to the Secretary of the Interior* (Washington DC, 1952), 393–94.
16. "Myer Out as Head of Indian Bureau," *New York Times*, 20 March 1953, 15.
17. Collier identified Lee as an important collaborator (with Myer) in the termination effort, and one who continued to exert influence long after Myer's departure. See "Return to Dishonor."
18. *Congressional Record*, 82d Cong., 2d sess., 18 March 1952, 2492.
19. While Armstrong and his colleagues sharply condemned the BIA as an institution, they offered nothing but praise for Commissioner Myer and Associate Commissioner Lee. Congressman Toby Morris, chairman of the House Subcommittee on Indian Affairs, noted that Myer and Lee were "men of the very highest character," and further, that Myer was a "man of unimpeachable character" and "outstanding ability." Congressman Norris Poulson of California called Myer "one of the best Indian commissioners" he had ever "had the privilege to come in contact with." Why such fulsome praise? Possibly because the commissioner was, as Representative Morris put it, "actively moving in the direction that we want to go." See *Congressional Record*, 82d Cong., 2d sess., 18 March 1952, 2487–90.
20. *Congressional Record*, 82d Cong., 2d sess., 18 March 1952, 2492.
21. U.S. Congress, House, *Report with Respect to the House Resolution Authorizing the Committee on Interior and Insular Affairs to Conduct an Investigation of the Bureau of Indian Affairs Pursuant to H. Res. 698*, 82d Cong., 2d sess., 15 December 1952, 2.
22. House, *Report with Respect to the House Resolution*, 17.
23. Francis McKinley, Coordinating Officer, to Elizabeth Bumgarner, 17 March 1951, Wilkinson Papers.
24. Stone to Walter V. Woehlke, 16 August 1950, RG 75, BIA, accession 57A-185, box 196, file 13916, National Archives, Washington DC.
25. Stone to Woehlke, 16 August 1950.
26. McKinley to Bumgarner, 17 March 1951.
27. Watkins to Curry, 18 February 1954, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
28. Watkins to Curry, 12 May 1953, extensively quoted in William C. Reed to Reginald O. Curry, 25 May 1953, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.

29. "This Time They'll Waste No Wampum," *Washington Star*, 7 May 1951, A-10.
30. McKinley to Bumgarner, 17 March 1951.
31. Bumgarner to McKinley, 13 March 1951, Wilkinson Papers.
32. Reed to Wilkinson, 5 February 1951, Wilkinson Papers.
33. Wilkinson to Reed, 9 February 1951, Wilkinson Papers.
34. McKinley to Bumgarner, 17 March 1951.
35. McKinley to Bumgarner, 17 March 1951.
36. Stone to Ralph M. Gelvin, 7 February 1952, RG 75, BIA, accession 57A-185, box 196, file 9020, National Archives, Washington DC.
37. Robert L. Bennett to Homer B. Jenkins, 15 April 1954, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
38. "Annual Report to Congress—draft copy," 22 December 1954, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
39. Stone to Gelvin, 7 February 1952.
40. "Annual Report to Congress—draft copy," 22 December 1954.
41. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954," RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
42. "Ute Ten Year Development Program," 10, RG 75, BIA, accession 59A-643, box 86, file 17541, National Archives, Washington DC.
43. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."
44. Author interview with Richard Curry, 6 August 1998, Roosevelt UT.
45. This speech is Curry's perspective on the past one hundred years of Ute history. It includes many interesting details. See Forrest R. Stone to the Commissioner of Indian Affairs, 26 September 1949, transmitting a copy of a speech given by Curry at Roosevelt on 25 August 1949, RG 75, BIA, accession 57A-185, box 196, file 20416, National Archives, Washington DC.
46. Curry to Bosone, 21 August 1951, Bosone Papers, MS 127, box 17, folder 2.
47. Robert L. Bennett, Travel Report, Division of Program, 27 August 1953, RG 75, BIA, accession 68A-4937, carton 63, file 8365-54-013, National Archives, Washington DC.
48. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."

49. Robert L. Bennett, Travel Report, 27 August 1953.
50. Robert L. Bennett to G. Warren Spaulding, "Field Trip Report," 19 November 1953, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
51. "Watkins, Solon Back Bill to 'Free' Tribes," *Salt Lake Tribune*, 11 April 1952.
52. Press release, Ute Tribal Office, 16 April 1952, Bosone Papers, MS 127, box 17, folder 3.
53. See Glen A. Wilkinson to John S. Boyden, 23 April 1952, and Ernest L. Wilkinson to Glen A. Wilkinson, 26 April 1952, Wilkinson Papers.
54. Stone to Lee, 21 April 1952, RG 75, BIA, accession 57A-185, box 196, file 00-52-147, National Archives, Washington DC.
55. "Making Indian Responsible Citizen Not Easy," editorial, *Salt Lake Tribune*, 15 April 1952.
56. Myer to Ralph M. Gelvin, 18 November 1952, RG 75, BIA, accession 57A-185, box 196, file 13910, National Archives, Washington DC.
57. In typical fashion, Myer decided that the Tribal Business Committee had the authority to change the proposed amendment and that it would "not be necessary to refer the proposed revision to a general council of the tribe." See Myer to Gelvin, 18 November 1942.
58. Boyden to Myer, 9 December 1952, RG 75, BIA, accession 57A-185, box 196, file 13910, National Archives, Washington DC.
59. Myer to Ralph M. Gelvin, 7 January 1953, RG 75, BIA, accession 57A-185, box 196, file 13910, National Archives, Washington DC.
60. See Ralph M. Gelvin to the Commissioner of Indian Affairs, 5 March 1954, and Harry W. Gilmore to the Commissioner of Indian Affairs, 22 June 1954, RG 75, BIA, accession 57A-185, box 196, file 13910, National Archives, Washington DC.
61. Curry to Bennett, 12 May 1953, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
62. Watkins to Curry, 12 May 1953, and William C. Reed to Curry, 25 May 1953, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
63. Bennett to G. Warren Spaulding, 24 June 1953, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
64. Robert L. Bennett, Travel Report, Division of Program, 25 May 1953, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.

65. Watkins to Curry, 18 February 1954.
66. See Watkins's comments in "House Report no. 2680," 83d Cong., 2d sess. (Washington DC, 1954), 7, 12.
67. "Ute Ten Year Development Program" (draft copy), 12–14, 14 December 1956, RG 75, BIA, accession 62A-523, file 6747-56-259, National Archives, Washington DC.

4. *Utah Paiutes as Watkins's Examples*

1. Deposition of John Boyden Sr., 4 October 1977, *Hackford v. First Security Bank*, 3–4, Nielson Papers.
2. In late 1953, Robert Bennett, then a program officer in the BIA Division of Program, made several drafts of legislation providing for the termination of the "Indians of Utah." Bennett attempted to protect the Indians by making participation in the program voluntary. On the other hand, he also included a provision granting authority to the secretary of the interior to implement the program without further congressional oversight. In a memo to his supervisor in the Division of Program, Warren G. Spaulding, he explained that "it is believed that this authority is desirable since the termination process could be put into operation immediately upon reaching agreement with the tribe rather than awaiting congressional action during which time factors can arise to disrupt the orderly termination process already agreed upon." See Memorandum, Robert L. Bennett to Warren G. Spaulding, 12 January 1954, John S. Boyden Papers, accession 823, box 30, folder 6, Manuscripts Division, Special Collections, University of Utah Marriott Library, Salt Lake City UT.
3. House Concurrent Resolution 108, 83d Cong., 1st sess. (1953).
4. "Joint Hearings by the Subcommittees on Indian Affairs of the Senate and House Committees on Interior and Insular Affairs," RG 46, Records of the U.S. Senate, 83d Cong., 2d sess., 1954, Sen. 83A-E9, box 36, docket 288, folder S. 2670, National Archives, Washington DC.
5. Holt, *Beneath These Red Cliffs*, 68.
6. U.S. Congress, House, *Providing for Termination of Federal Supervision over the Property of Certain Tribes, Bands, and Colonies of Indians in the State of Utah and the Individual Members Thereof*, H.R. 2661, 83d Cong., 2d sess., 1954.
7. For the text of the questionnaire and required documents, see House, *Report with Respect to the House Resolution*, 4–13.

8. "Summary Status of Withdrawal Status" for the Kaibab, Indian Peaks, Koosharem Withdrawal Programs, in Miscellaneous Correspondence, Reports, and Other Records, RG 75, BIA, boxes 1–2, National Archives Federal Records Center, Denver CO.
9. "Withdrawal Programming Report of Koosharem Reservation," filed by Parvin E. Church, 2 September 1952, included in "Summary Status of Withdrawal Status."
10. Holt, *Beneath These Red Cliffs*, 72.
11. "Report of Meeting at Fillmore with Senator Watkins," filed by Norman Holmes, 30 December 1950, BIA files, Cedar City UT.
12. "Report of Meeting at Fillmore with Senator Watkins."
13. Holt, *Beneath These Red Cliffs*, 75.
14. For a discussion of Harrington's activities among the Kaibab Paiutes, see Parvin E. Church to Harry W. Gilmore, 18 May 1953, and Harry W. Gilmore to H. M. Critchfield, 22 May 1953, RG 75, BIA, accession 59A-643, box 169, file 8413, National Archives, Washington DC.
15. Harry W. Gilmore to Douglas R. McKay, 14 September 1953, RG 75, BIA, accession 57A-185, box 196, file 9189-51, National Archives, Washington DC.
16. Senate, *Termination of Federal Supervision over Certain Tribes of Indians*, 44–45, 60–61.
17. Representing Harrington appears to have been a conflict of interest for Morris, since he had earlier represented the Kanosh band of Paiutes. At least, Morris attended the 30 December 1953 meeting in Fillmore as a representative of the Kanosh band. See "Report of Meeting at Fillmore with Senator Watkins."
18. George C. Morris to Douglas McKay, 1 September 1954, RG 75, BIA, accession 59A-643, box 169, file 8413, National Archives, Washington DC.
19. Senate, *Termination of Federal Supervision over Certain Tribes of Indians*, 1.
20. Senate, *Termination of Federal Supervision over Certain Tribes of Indians*, 17–18.
21. See, e.g., Francis J. Corley, S.J., to A. L. Miller, 22 February 1954, and Walter M. Nelson to Homer Ferguson, 24 February 1954, RG 46, Records of the U.S. Senate, 83d Cong., 2d sess., 1954, Sen. 83A-E9, box 36, docket 288, folder S. 2670, National Archives, Washington DC. Corley wrote to his congressman as a representative of the Institute of Social Order, an organization that took a keen interest in the termination

hearings. Nelson, a Detroit attorney, wrote to Senator Ferguson urging that the termination legislation be amended to require a majority vote of adult tribal members subject to the process.

22. Alexander Lesser to John S. Boyden, 2 February 1954, accession 823, box 30, folder 6, Boyden Papers.
23. Correspondence with Lesser discussed in Glen Wilkinson to Boyden, 8 February 1954, accession 823, box 30, folder 6, Boyden Papers.
24. Boyden to Glen Wilkinson, 10 February 1954, accession 823, box 30, folder 6, Boyden Papers.
25. Boyden to Watkins, 10 February 1954, accession 823, box 30, folder 6, Boyden Papers.
26. Boyden to Glen Wilkinson, 19 February 1954, accession 823, box 30, folder 6, Boyden Papers.
27. Senate, *Termination of Federal Supervision over Certain Tribes of Indians*, 41–42.
28. "Notice to the Shivwits, Kanosh, Koosharem, Indian Peaks, Skull Valley, and Washakie Shoshone Bands of Indians," 27 January 1954, accession 823, box 30, folder 6, Boyden Papers.
29. Senate, *Termination of Federal Supervision over Certain Tribes of Indians*, 50.
30. This method of obtaining the "consent" of tribes subject to termination proved to be the general pattern for the termination hearings. In May 1954, John Collier and the Institute for Ethnic Affairs produced a circular letter that challenged the joint committee's use of the term. He claimed that termination hearings had effectively substituted the word "consent" for "consult," which he explained as follows: "The formula of consultation falls short of the standard of consent in the three following vital respects: no procedure is prescribed whereby 'consultation' is accomplished, carried out as it is, with 'Indian groups' and 'individual tribal members'; consultation does not require that the tribe, a majority of the members, or indeed, any members, agree to the proposal, or that they believe it desirable for the tribe; and finally, even if a majority of the tribe favors a measure, there is no assurance that the measure submitted to the tribe is the one submitted to the Congress, or that support of the measure reflects their freely given consent, rather than coercion, undue influence, or other inappropriate considerations." See John Collier, circular letter representing the Institute of Ethnic Affairs, 8 May 1954, copy in accession 823, box 30, folder 6, Boyden Papers.

31. Senate, *Termination of Federal Supervision over Certain Tribes of Indians*, 61–62.
32. Senate, *Termination of Federal Supervision over Certain Tribes of Indians*, 45.
33. Senate, *Termination of Federal Supervision over Certain Tribes of Indians*, 67.
34. Senate, *Termination of Federal Supervision over Certain Tribes of Indians*, 77.
35. Senate, *Termination of Federal Supervision over Certain Tribes of Indians*, 86.
36. Boyden and the Wilkinson firm seem to have endured a rather strained business partnership. Ernest Wilkinson referred to it as a "fictional partnership." By 1955 the Wilkinson partners decided to terminate the relationship because they felt that Boyden did not "play on the team" and always preferred to "work alone." See "Notes of Partnership Meeting, Wilkinson, Cragun, & Barker," 27 January 1955, Washington DC, Wilkinson Papers.
37. Glen Wilkinson to Boyden, 15 February 1954, accession 823, box 30, folder 6, Boyden Papers.
38. The dubious honor of being first went to the Menominee tribe. The Menominee bill passed on 17 June 1954. In mid-August Congress approved measures terminating the western Oregon bands, the Klamaths, the four Utah Paiute bands, and the Alabama-Coushattas.
39. According to Holt's calculations, the BIA and other federal agencies spent $21,612 on the Utah Paiute Bands in fiscal year 1953 alone. See *Beneath These Red Cliffs*, 70–71.
40. L. L. Nelson to Commissioner of Indian Affairs, an excerpt from "section by section analysis of H.R. 7674 if amended as suggested," 22 June 1954. RG 75, BIA, accession 59A-643, box 86, file 8875, National Archives, Washington DC.
41. Nelson to Commissioner of Indian Affairs, 22 June 1954.
42. "Notice," distributed by Uintah and Ouray superintendent Forrest Stone to the Indian Peaks Paiute Indian Band, 3 June 1952, accession 823, box 30, folder 6, Boyden Papers.
43. Stone to Boyden, 16 April 1952, accession 823, box 30, folder 6, Boyden Papers; and Meeting Minutes, General Council of the Indian Peaks Band, 18 June 1952, RG 75, BIA, accession 68A-4937, box 63, file 8890-52-174.1, National Archives, Washington DC.
44. For examples of Boyden's efforts to sell the Indian Peaks Reservation, see Boyden to Parvin E. Church, 25 April 1952, Church to Boyden, 28

July 1952, and Boyden to Church, 18 August 1952, accession 823, box 30, folder 6, Boyden Papers.

45. Meeting Minutes, General Council of the Indian Peaks Band, 17 April 1953, RG 75, BIA, accession 68A-4937, box 63, file 8890-52-174.1, National Archives, Washington DC.
46. Gilmore to Boyden, 27 April 1954, accession 823, box 30, folder 6, Boyden Papers.
47. Boyden to Clifford Jake, 17 June 1954, accession 823, box 30, folder 6, Boyden Papers.
48. Orme Lewis to Guy Cordon, 13 July 1954, RG 75, BIA, accession 59A-643, box 86, file 8875, National Archives, Washington DC.
49. Boyden to Commissioner of Indian Affairs, 1 July 1954, RG 75, BIA, accession 59A-643, box 86, file 8875, National Archives, Washington DC.
50. Boyden to Commissioner of Indian Affairs, 1 July 1954.
51. Lee to Boyden, 19 July 1954, RG 75, BIA, accession 59A-643, box 86, file 9430, National Archives, Washington DC.
52. Boyden to Gilmore, 21 September 1954, accession 823, box 30, folder 6, Boyden Papers.
53. Orme Lewis to Guy Cordon, 5 August 1954, RG 46, Records of the U.S. Senate, 83rd Cong., 2d sess., 1954, Sen. 83A-E9, box 36, docket 288, folder S. 2670, National Archives, Washington DC.
54. Cordon to Lewis, 17 August 1954, RG 46, Records of the U.S. Senate, 83rd Cong., 2d sess., 1954, Sen. 83A-E9, box 36, docket 288, folder S. 2670, National Archives, Washington DC.
55. Greenwood misidentified Timikin as the speaker of the Kanosh band. See Greenwood to Cordon, 9 August 1954, RG 46, Records of the U.S. Senate, 83d Cong., 2d sess., 1954, Sen. 83A-E9, box 36, docket 288, folder S. 2670, National Archives, Washington DC.
56. Cordon to Greenwood, 17 August 1954, RG 46, Records of the U.S. Senate, 83d Cong., 2d sess., 1954, Sen. 83A-E9, box 36, docket 288, folder S. 2670, National Archives, Washington DC.
57. La Farge to Ernest Wilkinson, 22 November 1954, Wilkinson Papers.
58. Newsletter of the American Indian Fund and the Association on American Indian Affairs, Inc. November 1954, Number 9, New Series, Wilkinson Papers.
59. Newsletter of the American Indian Fund and the Association on American Indian Affairs, Inc., November 1954, Wilkinson Papers.
60. Ernest Wilkinson to Glen Wilkinson, 1 December 1954, and accompanying documents, Wilkinson Papers.
61. The Mormon Church provided a considerable amount of assistance to

all of the Paiute bands. It helped the Cedar band more because they received less federal assistance. See Holt, *Beneath These Red Cliffs*, 70.

62. Wilkinson to the First Presidency of the Church of Jesus Christ of Latter-day Saints, 31 May 1954, box 63, folder 3, Wilkinson Presidential Papers.
63. Memorandum, Dr. Jay B. Nash to President Ernest L. Wilkinson, Brigham Young University, 2 November 1954, Wilkinson Papers.
64. Gilmore to the Commissioner of Indian Affairs, 7 February 1955, RG 75, BIA, accession 59A-643, box 86, file 17071, National Archives, Washington DC.
65. Selene Gifford to Frederick M. Haverland, 14 February 1955, RG 75, BIA, accession 59A-643, box 86, file 17071, National Archives, Washington DC. For examples of ordinances, see "Resolution," Koosharem Band of Paiute Indians, Richfield, Utah, February 24, 1955, and "Resolution," Indian Peaks Band of Paiute Indians, 23 February 1955, RG 75, BIA, accession 59A-643, box 86, file 17071, National Archives, Washington DC.
66. "Shivwits, Kanosh, Koosharem and Indian Peaks Bands of Paiute Indian Tribe Notice of Publication of Final Membership Rolls," 14 April 1956, RG 75, BIA, accession 59A-643, box 86, file 17071, National Archives, Washington DC.
67. Collier, "Indian Takeaway," 290–91.
68. Holt, *Beneath These Red Cliffs*, 104.
69. Unfortunately, the restoration of Paiute reservation trust lands took place during the Reagan administration, which did not support land restoration legislation, and the Paiutes were forced to settle for a limited reservation of less than five thousand acres of Bureau of Land Management land. For a thorough discussion of Paiute restoration, see Holt, *Beneath These Red Cliffs*, 125–47.

5. Tribal Alliances and Tribal Divisions

1. Curry to Robert L. Bennett, 12 May 1953, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
2. Curry to Bennett, 12 May 1953.
3. Curry to Bennett, 12 May 1953.
4. Curry to Bennett, 12 May 1953.
5. "Long distance telephone call to Area Director Gelvin," Memo by Robert L. Bennett, 6 May 1953, RG 75, BIA, accession 57A-185, box 196, file 9120, National Archives, Washington DC.

6. Curry to Bennett, 12 May 1953.
7. Murray to Watkins, 20 January 1953, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
8. Murray to Watkins, 20 January 1953.
9. Bennett to G. Warren Spaulding, 24 June 1953, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
10. Robert L. Bennett, Travel Report, Division of Program, 25 May 1953, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
11. Fred H. Massey to James A. Haley, 26 August 1958, RG 75, BIA, accession 64A-528, box 105, file 2835-57-302, National Archives, Washington DC.
12. Massey to Haley, 26 August 1958.
13. Massey to Haley, 26 August 1958.
14. Tom-Pee-Saw to Watkins, 16 February 1957, RG 75, BIA, accession 64A-528, box 105, file 2835-57-302, National Archives, Washington DC.
15. Watkins to Lee, 25 February 1957, RG 75, BIA, accession 64A-528, box 105, file 2835-57-302, National Archives, Washington DC.
16. Lee to Watkins, 14 March 1957, RG 75, BIA, accession 64A-528, box 105, file 2835-57-302, National Archives, Washington DC.
17. Haverland to the Commissioner of Indian Affairs, 25 March 1957, RG 75, BIA, accession 64A-528, box 105, file 2835-57-302, National Archives, Washington DC.
18. In August 1958, Kirk wrote to Emmons and protested the leasing of Seminole land for the purpose of constructing a frontier town–type amusement center, arguing that an arts and crafts center would be of greater value to the tribe. This letter, like most of Kirk's correspondence, even *looked* fictitious. The letterhead bore the names of seventeen board members of the "League of North American Indians," yet only Frank Tom-Pee-Saw seems to have been active in visiting the reservations or in corresponding. The language and spelling were rough as well, although the sentiments were reasonable. See Tom-Pee-Saw to Emmons, 20 August 1958, RG 75, BIA, accession 64A-528, box 105, file 2835-57-302, National Archives, Washington DC.
19. Homer B. Jenkins to L. V. Langan, 16 September 1958, RG 75, BIA, accession 64A-528, box 105, file 2835-57-302, National Archives, Washington DC.
20. That the commissioner of Indian Affairs became personally involved in this matter demonstrates the impact Kirk's activities had on bureau

officials. Most of them displayed a degree of exasperation entirely disproportionate to Kirk's rather innocuous antics. The cover letter Emmons sent out to the area directors even bears his personal signature, rather than the usual stamp. See "Memorandum, Glenn L. Emmons to all Area Directors," 18 September 1958, RG 75, BIA, accession 64A-528, box 105, file 2835-57-302, National Archives, Washington DC.

21. Robert L. Bennett to G. Warren Spaulding, 24 June 1953, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
22. Bennett to Spaulding, 24 June 1953.
23. Robert L. Bennett, Travel Report, Division of Program, 25 May 1953.
24. Mastin G. White to Reginald O. Curry, 24 April 1951, RG 75, BIA, accession 57A-185, box 196, file 13916, National Archives, Washington DC.
25. Curry to Watkins, 12 January 1951, RG 75, BIA, accession 57A-185, box 196, file 13916, National Archives, Washington DC.
26. Ute Resolution no. 600, Uintah and Ouray Agency, Fort Duchesne UT, 27 May 1953. RG 75, BIA, accession 59A-643, box 86, file 9430, National Archives, Washington DC. The resolution stipulated that future enrollment in the Ute Indian tribe would be restricted to persons having one-half or more Ute Indian blood. The Tribal Business Committee passed the resolution in accordance with the vote of the tribe's General Council on 26 May 1953, where the motion passed by a vote of 107 to 1.
27. Gelvin to the Commissioner of Indian Affairs, 3 June 1953, RG 75, BIA, accession 59A-643, box 86, file 9430, National Archives, Washington DC.
28. There is a handwritten notation on Gelvin's letter from an official in Tribal Programs noting that Gelvin's interpretation did not reflect "what [the] resolution actually says." See Gelvin to the Commissioner of Indian Affairs, 3 June 1953.
29. W. Barton Greenwood to Chairman, Tribal Business Committee of the Uintah and Ouray Reservation, 19 June 1953, RG 75, BIA, accession 59A-643, box 86, file 9430, National Archives, Washington DC.
30. Curry to the Commissioner of Indian Affairs, 29 June 1953, RG 75, BIA, accession 59A-643, box 86, file 9430, National Archives, Washington DC.
31. "Resolution no. 643 of the Tribal Business Committee of the Uintah and Ouray Agency, Fort Duchesne, Utah," 24 June 1953, RG 75, BIA, accession 59A-643, box 86, file 9430, National Archives, Washington DC.

32. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954," RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
33. Bennett to Homer B. Jenkins, 15 April 1954, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
34. "Annual Report to Congress—draft copy," 22 December 1954, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
35. Bennett frequently admitted this to be the case. See "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."
36. Conetah, *History of the Northern Ute People*, 24.
37. MacKay, "Indian Cultures, c. 1840," 77.
38. Metcalf, "A Reappraisal of Utah's Black Hawk War," 61–63.
39. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."
40. Legal opinion rendered by Wilkinson, Cragun, and Barker, 19 November 1947, RG 75, BIA, accession 57A-185, box 196, file 13916, National Archives, Washington DC.
41. Robert L. Bennett to G. Warren Spaulding, "Field Trip Report," 19 November 1953, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
42. Bennett to Jenkins, 15 April 1954.
43. "Population Figures of the Enrolled Members of the Ute Indian Tribe Uintah and Ouray Reservation, March 1954," RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
44. Brown, "Métis, Halfbreeds, and Other Real People," 21.
45. Clifton, "Alternate Identities and Cultural Frontiers," 29.
46. Clifton, "Alternate Identities and Cultural Frontiers," 11.
47. Meyer, "American Indian Blood Quantum Requirements," 240–41.
48. Meyer, "American Indian Blood Quantum Requirements," 237–38.
49. According to Snipp, racial definitions generally fall into three categories: mystical definitions, which assert that modern racial groups have descended from mysterious ancient civilizations—a standard he terms the "most pernicious" and "far removed" from reality; biological definitions, which divide the human race into four main groupings based on genetic indicators; and administrative definitions, which are created by bureaucratic and political institutions such as the Census Bureau or tribal governing bodies. See Snipp, *American Indians*, 28.

50. Snipp, *American Indians*, 32.
51. Snipp, *American Indians*, 34.
52. Clifton, "Alternate Identities and Cultural Frontiers," 26.
53. Clifton, "Alternate Identities and Cultural Frontiers," 23.
54. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."
55. For a brief overview of these events see Reginald O. Curry to Secretary of the Interior Oscar L. Chapman, 30 November 1950, RG 75, BIA, accession 57A-185, box 196, file 13916, National Archives, Washington DC.
56. Bennett to Spaulding, "Field Trip Report," 19 November 1953.
57. "Ute Ten Year Development Program," RG 75, BIA, accession 59A-643, box 86, file 17541, National Archives, Washington DC.
58. Robert L. Bennett, Travel Report, Division of Program, 27 August 1953, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
59. Bennett to Spaulding, "Field Trip Report," 19 November 1953.
60. "Notice of Tribal Meetings," Tribal Office, Uintah and Ouray Agency, 2 November 1953, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
61. Bennett to Spaulding, "Field Trip Report," 19 November 1953.
62. "Radio Address Delivered by Robert L. Bennett, Program Officer, over Radio Station K.J.A.M.," 4 November 1953, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
63. Bennett to Spaulding, "Field Trip Report," 19 November 1953.
64. Curry to Boyden, 30 December 1953, accession 823, box 30, folder 6, Boyden Papers.
65. "Ute Ten Year Development Program," 8.
66. "Ute Ten Year Development Program," 9–10.
67. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."
68. "Ute Ten Year Development Program," 9, 14–15.
69. Watkins to Curry, 18 February 1954.
70. "Ute Ten Year Development Program," 15–16.
71. Ellis, "Robert L. Bennett," 326–27.
72. Robert L. Bennett interview by Thomas Cowger, oral history interview, Albuquerque NM, 20–21 May 1993, 102, National Anthropological Archives, Smithsonian Institution.
73. Bennett interview, 102.

74. Bennett interview, 104.
75. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."
76. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."
77. Bennett interview, 102.
78. "Resolution" (no author or date—circa March 1954), RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
79. "Resolution" (no author or date—circa March 1954).
80. "Notes, Bennett Field Trip March 1954," RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
81. "Ute Ten Year Development Program," 17.
82. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."
83. Bennett to Jenkins, 15 April 1954.
84. "Ute Ten Year Development Program," 12–13.
85. "Ute Ten Year Development Program," 28.
86. "Ute Ten Year Development Program," 29–30.
87. "Notes, Bennett Field Trip March 1954."
88. "Notes, Bennett Field Trip March 1954."
89. "Notes, Bennett Field Trip March 1954."
90. Bennett to Jenkins, 15 April 1954.
91. "Notes, Bennett Field Trip March 1954."
92. Bennett interview, 103.
93. Bennett to Jenkins, 15 April 1954.
94. "Notes, Bennett Field Trip March 1954."
95. "Notes, Bennett Field Trip March 1954."
96. "Resume of telephone call (collect) from Robert L. Bennett, at Fort Duchesne, Utah," 11 March 1954, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
97. Telegram, Ute Tribal Planning Board to Arthur V. Watkins, 18 March 1954, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
98. Proposed Resolution, drafted for the General Council of the Uintah and Ouray Reservation, 31 March 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
99. Proposed Resolution, drafted for the General Council of the Uintah and Ouray Reservation, 31 March 1954.

100. Boyden to Ernest Wilkinson, 9 March 1954, Wilkinson Papers.
101. Boyden to Ernest Wilkinson, 23 March 1954, Wilkinson Papers.
102. Bennett to Jenkins, 15 April 1954.
103. Ernest Wilkinson to Hawkins, 25 January 1954, Wilkinson Papers.

6. The Bureaucratic Solution

1. L. L. Nelson to Ralph M. Gelvin, 7 April 1954, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
2. "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954," RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
3. Deposition of Waubin Waunzitz, 18 September 1969, *Affiliated Ute Citizens of the State of Utah v. United States*, 215 ct. cl. 935 (1977), Nielson Papers, accession 1642, box 32, folder 4.
4. Waunzitz deposition, 18 September 1969.
5. Murdock interview.
6. Deposition of Preston V. Allen, 22 April 1977, *Hackford v. First Security Bank*, Nielson Papers, accession 1642, box 26, folder 1.
7. Proposed Resolution, drafted for the General Council of the Uintah and Ouray Reservation, 31 March 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
8. Jenkins to the Commissioner of Indian Affairs, 21 April 1954, RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.
9. "Proposed Legislation to Terminate Federal Supervision over the Ute Indians," 7, 9, stenographic transcript, Fort Duchesne UT, 23 April 1954, Subcommittee of the Committee on Interior and Insular Affairs, U.S. Senate, Washington DC, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
10. "Proposed Legislation to Terminate Federal Supervision over the Ute Indians," 2d sess., 26.
11. "Proposed Legislation to Terminate Federal Supervision over the Ute Indians," 2d sess., 7.
12. Boyden to Wilkinson, 27 May 1954, Wilkinson Papers.
13. Wilkinson to Boyden, 31 May 1954, Wilkinson Papers.
14. Wilkinson to Boyden, 31 May 1954.
15. Ernest Wilkinson to Glen Wilkinson, 31 May 1954, Wilkinson Papers.

16. Memorandum, "Resume of telephone call made to Ralph M. Gelvin, from Homer B. Jenkins and Robert L. Bennett," 11 May 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
17. Memorandum, "Resume of telephone call made to Ralph M. Gelvin, from Homer B. Jenkins and Robert L. Bennett," 11 May 1954.
18. Gilmore to the Commissioner of Indian Affairs, 11 May 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
19. Boyden to Emmons, 13 May 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
20. Jenkins to Boyden, 21 May 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
21. U.S. Congress, Senate, *Hearings on S. 2813, H.R. 2828, and H.R. 7135*, Senate Committee on Interior and Insular Affairs, 83rd Cong., 2d sess., 10–12 March 1954, 668–69, 678.
22. "Partition of Ute Indian Tribe of Uintah and Ouray Reservation, Utah, and Termination of Federal Supervision over Mixed-blood Members," 46, stenographic transcript of hearings before the Committee on Interior and Insular Affairs, 9 June 1954, U.S. Senate, Washington DC, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
23. "A Progress Report of the Ute Delegation in Washington DC," Nielson Papers, accession 1642, box 18, folder 22.
24. "Partition of Ute Indian Tribe," 10–11.
25. Nielson, *The Dispossessed*, 60.
26. Boyden to Curry, 9 May 1957, RG 75, BIA, accession 59A-643, box 86, file 17071, National Archives, Washington DC.
27. Boyden to Wilkinson, 18 June 1954, Wilkinson Papers.
28. Boyden to Wilkinson, 18 June 1954.
29. "A Progress Report of the Ute Delegation."
30. Boyden to Curry, 9 May 1957.
31. "Partition of Ute Indian Tribe," 14.
32. "A Progress Report of the Ute Delegation."
33. Flanery to the Commissioner of Indian Affairs, 28 March 1956, RG 75, BIA, accession 59A-643, box 86, file 17071, National Archives, Washington DC.
34. Boyden to Curry, 9 May 1957.
35. Boyden to Curry, 9 May 1957.

36. Boyden to Curry, 9 May 1957.
37. Dillman to the Commissioner of Indian Affairs, 28 June 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
38. Greenwood to Dillman, 9 August 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
39. Ernest Wilkinson to Glen Wilkinson, 31 May 1954, Wilkinson Papers.
40. Glen Wilkinson to Ernest Wilkinson, 16 June 1954, Wilkinson Papers.
41. Glen Wilkinson to Ernest Wilkinson, 16 June 1954.
42. Glen Wilkinson to Ernest Wilkinson, 16 June 1954.
43. Boyden had been a full partner in the firm at the time Ernest Wilkinson became president of Brigham Young University. Boyden, however, insisted on maintaining his Salt Lake City office (briefly known as Boyden and Wilkinson). Potential conflicts of interest led Wilkinson to dissolve that partnership, although Boyden maintained a loose affiliation with Wilkinson, Cragun and Barker. Wilkinson clearly preferred that even this relationship be dissolved, and in 1955 he put an end to it. See Handwritten Notes of Partnership Meeting: Wilkinson, Cragun, and Barker, 27 January 1955, Washington DC, Wilkinson Papers.
44. Bureau of Indian Affairs, Phoenix Area Office, *History of the Ute Partition Act, Public Law 83-671 (68 Stat. 868), on the Uintah and Ouray Reservation, Fort Duchesne, Utah*, 11–12 (n.d.), Special Collections, University of Utah Marriott Library, Salt Lake City UT.
45. "Minutes of Meeting, Board of Directors of the Affiliated Ute Citizens, Uintah and Ouray Agency, Fort Duchesne, Utah, July 14, 1956," Exhibit 1, *Affiliated Ute Citizens v. Ute Tribe and Hodel*, District Court of Utah Civil Case no. 85-0569, accession 823, box 69, folder 28, Boyden Papers.
46. "Minutes of Meeting, Board of Directors of the Affiliated Ute Citizens."
47. Crow to Haverland, 2 August 1956, RG 75, BIA, accession 68A-4937, box 63, file 12262-56-174.1, National Archives, Washington DC.
48. James B. Ring to the Commissioner of Indian Affairs, 23 August 1956, RG 75, BIA, accession 68A-4937, box 63, file 12262-56-174.1, National Archives, Washington DC.
49. Frederick M. Haverland to the Commissioner of Indian Affairs, 28 August 1956, RG 75, BIA, accession 68A-4937, box 63, file 12262-56-174.1, National Archives, Washington DC.
50. "Ute Resolution, 29 May 1954," RG 75, BIA, accession 57A-185, box 196, file 9639-52-075, National Archives, Washington DC.

51. "Resolution," Program Committee of the Full Blood Group of the Ute Tribe, 4 June 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
52. Allan G. Harper to Homer B. Jenkins, 10 June 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
53. Allan G. Harper, "Proposed Uintah-Ouray Partition, Advantages and Disadvantages," 7 June 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
54. Harper, "Proposed Uintah-Ouray Partition, Advantages and Disadvantages." See also Allan G. Harper, "Salient Points: Proposed Uintah-Ouray Partition," 7 June 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
55. Harper to Homer B. Jenkins, 18 August 1954, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
56. Harper to Jenkins, 18 August 1954.
57. "Ute Ten Year Development Program," 31, RG 75, BIA, accession 59A-643, box 86, file 17541, National Archives, Washington DC.
58. "Ute Ten Year Development Program," 30.
59. "Ute Ten Year Development Program," 31.
60. "Ute Ten Year Development Program," 33–35.
61. Most of the suggested revisions centered on the tribe's proposed credit program, to be implemented after the withdrawal of the mixed-bloods. See Memorandum of J. E. White, 24 November 1954, RG 75, BIA, accession 59A-643, box 86, file 17541, National Archives, Washington DC.
62. Curry to the Commissioner of Indian Affairs, 12 January 1955, and Frederick M. Haverland to the Commissioner of Indian Affairs, 31 January 1955, RG 75, BIA, accession 57A-185, box 197, file 8945-51-211, National Archives, Washington DC.
63. "Ute Ten Year Development Program," 39.
64. Resolution of the Uncompahgre Utes, 29 April 1955, accession 823, box 24, folder 7, Boyden Papers.
65. Resolution of the Uncompahgre Utes, 29 April 1955.
66. Although the Uncompahgres shared the common view that their rights had been violated by the high-handed tactics of Watkins, Boyden, and the BIA, they never ceased to view the mixed-blood members as anything but infiltrators and usurpers. The resolution illustrated this fact by further resolving that a "full investigation and study be made of the origin of the members of the Mixed Blood group, the re-

sponsibility for their enrollment in the Ute Tribe, and the reasons for their gaining vested rights in the property and assets of the various bands of Utes, notwithstanding the perennial and never-ceasing objections to their presence and enrollment in the Ute Tribe." See Resolution of the Uncompahgre Utes, 29 April 1955.

67. Resolutions of Full-Blood Indians of the Ute Indian Tribe on the Uintah and Ouray Reservation concerning Public Law 671, Documentary Exhibit 401, and Resolution of Uncompahgre Band of Ute Indians, 29 April 1955, Documentary Exhibit 404, *Hackford v. First Security Bank*, U.S.D.C., District of Utah, Docket no. 75-278, National Archives Federal Records Center.
68. The Uncompahgres used the plural form "attorneys" presumably because, in addition to Boyden's actions, many harbored strong suspicions about the role of claims attorney Ernest Wilkinson. Wilkinson appeared side by side with Boyden at the two most important General Council meetings—in May 1950, when he foisted the "share and share alike" agreement on the tribe, and in March 1954, when he presented the resolution to partition the tribe. Although Wilkinson had everything to do with the former and almost nothing to do with the latter, the Uncompahgres linked him and Boyden together in producing these evils. The most astute among them also perceived the careful hand of Senator Watkins in these events.
69. "Minutes of the General Council Meeting held in the Randlett Community Building," 24 May 1955, accession 823, box 24, folder 7, Boyden Papers.
70. "Ute Ten Year Development Program," 40.
71. "Bureau of Indian Affairs Memorandum," Homer B. Jenkins, 10 April 1956, RG 75, BIA, accession 59A-643, box 86, file 17071, National Archives, Washington DC.

7. John S. Boyden's Magnum Opus

1. See Frederick M. Haverland to the Commissioner of Indian Affairs, 28 March 1956, John O. Crow to Frederick M. Haverland, 2 August 1956, and James B. Ring to the Commissioner of Indian Affairs, 23 August, 1956, RG 75, BIA, accession 68A-4937, box 63, file 12262-56-174.1, National Archives, Washington DC. Boyden's conflict of interest between the Ute tribe and the Affiliated Ute Citizens resulted in unsuccessful proceedings against Boyden before the Utah State Bar in the 1970s. The

complaint was lodged by Parker M. Nielson, an attorney for several groups of Affiliated Utes.

2. Full-blood Utes were well aware of Boyden's conflict of interest. A petition signed by twenty full-blood Utes in 1957 denied that Boyden represented them and claimed that he seemed "to be working for interests inimical to us." See Julius Twohy to Glenn L. Emmons, 31 May 1957, Nielson Papers, accession 1642, box 12, folder 17.
3. "Bureau of Indian Affairs Memorandum," Homer B. Jenkins, 10 April 1956, RG 75, BIA, accession 59A-643, box 86, file 17071, National Archives, Washington DC.
4. "Ute Indians of the Uintah and Ouray Reservation of Utah," 15 September 1960, RG 75, BIA, accession 64A-528, box 105, file 8201-57-308, National Archives, Washington DC.
5. "Bureau of Indian Affairs Memorandum," Homer B. Jenkins, 10 April 1956.
6. "Ute Indians of the Uintah and Ouray Reservation of Utah," 15 September 1960.
7. Nielson, *The Dispossessed*, 83.
8. "Partition of Ute Indian Tribe of Uintah and Ouray Reservation, Utah, and Termination of Federal Supervision over Mixed-blood Members," 42, stenographic transcript of Hearings before the Committee on Interior and Insular Affairs, 9 June 1954, U.S. Senate, Washington DC, RG 75, BIA, accession 68A-4937, box 63, file 8365-54-013, National Archives, Washington DC.
9. "Partition of Ute Indian Tribe," 42.
10. "Partition of Ute Indian Tribe," 42.
11. "Partition of Ute Indian Tribe," 46.
12. "Partition of Ute Indian Tribe," 47.
13. "Plan for Distribution of the Assets of the Individual Mixed-Blood Members of the Ute Indian Tribe, Uintah and Ouray Reservation, Utah," 1, RG 75, BIA, accession 62A-523, box 64, file 11476-56-224, National Archives, Washington DC.
14. "Minutes of the Mixed-blood Planning Board on the proposed plan of distribution," 28 April 1955, Nielson Papers, accession 1642, box 20, folder 4.
15. In his testimony on the Ute Partition Act before Watkins's Subcommittee on Indian Affairs, e.g., Harris is identified (and identified himself) as a "representative of the mixed blood members of the Ute Tribe." See "Partition of Ute Indian Tribe," 15.

16. Bureau of Indian Affairs, Phoenix Area Office, *History of the Ute Partition Act*, 11–12.
17. Minutes of the Affiliated Ute Citizens, 14 July 1956, *Hackford v. First Security Bank*, Plaintiff's Exhibit 75, and "Plan for the Distribution of Assets and Affiliated Ute Citizens Constitution and Bylaws," *Hackford v. First Security Bank*, Plaintiff's Exhibit 20, Nielson Papers, accession 1642, box 40.
18. Cited in "Plan for Distribution of the Assets of the Individual Mixed-Blood Members of the Ute Indian Tribe, Uintah and Ouray Reservation, Utah," 1. For the full text of the Ute Partition Act, see the *Congressional Record*, 83d Cong., 2d sess., 1954, 13124–28, or 25 U.S.C. § 677 et seq., 68 Stat. 868.
19. "Plan for Distribution of Assets," 7.
20. "Ute Ten Year Development Program," RG 75, BIA, accession 59A-643, box 86, file 17541, National Archives, Washington DC, 82.
21. Deposition of Preston Allen, 22 April 1977, *Hackford v. First Security Bank*, 24–25, Nielson Papers. For a broader discussion of these events, see Nielson, *The Dispossessed*, 91.
22. Haverland to the Commissioner of Indian Affairs, 29 April 1957, RG 75, BIA, accession 64A-528, box 105, file 8201-57-308, National Archives, Washington DC.
23. Minutes of a Special Joint Tribal Business Committee and Affiliated Utes Meeting, 23 October 1957, 1, Defendant's Exhibit 29, *Hackford v. First Security Bank*, U.S.D.C., District of Utah, Docket no. 75-278, National Archives Federal Records Center (hereafter cited as *Hackford v. First Security Bank*, NAFRC).
24. Minutes of a Special Joint Tribal Business Committee and Affiliated Utes Meeting, 23 October 1957, 4.
25. Minutes of a Special Joint Tribal Business Committee and Affiliated Utes Meeting, 23 October 1957, 5.
26. Minutes of a Special Joint Tribal Business Committee and Affiliated Utes Meeting, 23 October 1957, 5.
27. Minutes of a Special Joint Tribal Business Committee and Affiliated Utes Meeting, 23 October 1957, 7.
28. Twohy to Emmons, 7 December 1956, Nielson Papers, accession 1642, box 12, folder 15.
29. Thomas M. Reid to Twohy, 4 March 1957, Nielson Papers, accession 1642, box 12, folder 15.
30. Twohy to Emmons, 7 December 1956.
31. Telegram, Julius Twohy, Chairman of Special Committee Independent

Ute Indians, to the Secretary of the Interior, 6 June 1958, RG 75, BIA, accession 64A-528, box 105, file 8201-57-308, National Archives, Washington DC.

32. Ernst to Twohy, 25 June 1958, RG 75, BIA, accession 64A-528, box 105, file 8201-57-308. Following this episode, the True Utes continued to agitate on the reservation against the loss of tribal property and some of the more oppressive features of the Ute development program. Most objectionable was the Family Plan program, which required individual Utes to apply for funding for home improvements or other projects. In 1960 these accumulated grievances boiled over into a into a four-day takeover of the tribal offices at Fort Duchesne.
33. "Partition of Ute Indian Tribe," 51.
34. "Plan for the Distribution of Assets," 10.
35. "Ute Indians of the Uintah and Ouray Reservation of Utah," 15 September 1960.
36. The ICC also found, however, that another large block of land in Carbon and Emery Counties did not historically belong to the Utes, and denied compensation.
37. "Special Report to the Uintah Band on Interlocutory Decisions of Indian Claims Commission in Dockets 44 and 45," submitted to the Ute Indian tribe by the Wilkinson, Cragun, Barker and Hawkins law firm, 26 February 1957, RG 75, BIA, accession 64A-528, box 103, file 1433-57-174.1, National Archives, Washington DC.
38. In the aftermath of the tribe's division, Ernest Wilkinson had difficulty determining which Ute groups had to sign release forms to approve the pending awards. See Ernest L. Wilkinson to Glenn L. Emmons, 18 November 1957; see also W. Barton Greenwood to Ernest L. Wilkinson, 22 November 1957, and Reginald O. Curry to Darrell Fleming, 20 December 1957, RG 75, BIA, accession 64A-528, box 103, file 10792-57-175.2, National Archives, Washington DC.
39. Deposition of John S. Boyden Sr., 4 October 1977, *Hackford v. First Security Bank*, 22–23, Nielson Papers.
40. Emmons to the Chairman of the Ute Tribal Business Committee, 25 November 1958, RG 75, BIA, accession 64A-528, box 102, file 10317-57-054, National Archives, Washington DC.
41. Cuch to Emmons, 31 March 1960, Defendant's Exhibit D, *Hackford v. First Security Bank*, NAFRC.
42. "Blackmail Charged to the Indian Bureau," *New York Times*, 17 September 1958, 75.
43. Boyden, *Three Score and Ten*, 171.

44. Minutes of the Board of Directors of the Affiliated Ute Citizens held at Fort Duchesne, Utah, 8 December 1958, Defendant's Exhibit P, *Hackford v. First Security Bank*, NAFRC.
45. Frederick M. Haverland to the Commissioner of Indian Affairs, 17 August 1960, Defendant's Exhibit 195, *Hackford v. First Security Bank*, NAFRC.
46. George W. Hedden to the Commissioner of Indian Affairs, 18 December 1959, Defendant's Exhibit 199, *Hackford v. First Security Bank*, NAFRC.
47. Richard N. Hackford Jr. and Glen Murdock Jr. to Glenn L. Emmons, 31 December 1959, Defendant's Exhibit 198, *Hackford v. First Security Bank*, NAFRC.
48. Hugh W. Colton to Frank E. Moss, 20 March 1961, Defendant's Exhibit 130, *Hackford v. First Security Bank*, NAFRC.
49. Cuch to Emmons, 31 March 1960.
50. Emmons to Cuch, 16 June 1960, Defendant's Exhibit A, *Hackford v. First Security Bank*, NAFRC.
51. Haverland was probably motivated by a desire to see that the mixed-bloods were treated fairly. In any event, he took a bold position against the commissioner, especially since the secretary of the interior's office had already ruled that the tribe *could* purchase shares of AUC stock. See Haverland to the Commissioner of Indian Affairs, 12 August 1960, Defendant's Exhibit 196, *Hackford v. First Security Bank*, NAFRC.
52. Boyden to Lee, 16 August 1960, Defendant's Exhibit [not numbered], *Hackford v. First Security Bank*, NAFRC.
53. The Interior Department informed Haverland that his interpretation did "not take note of Section 243.6 which contemplates that the Superintendent will give notice of offers to the Tribal Business Committee of the Tribe, meaning the Ute Indian Tribe." It also informed him that the department did "not share your apparent concern regarding reported purchases for outcome of any possible suit." See Telegram, Roger Ernst to Area Director, Phoenix Area Office, 24 August 1960, and Telegram, Acting Commissioner to John S. Boyden [n.d.], Defendant's Exhibits 192 and 191, *Hackford v. First Security Bank*, NAFRC.
54. Martin M. Zollar to Frederick M. Haverland, 18 August 1960, Defendant's Exhibit 194, *Hackford v. First Security Bank*, NAFRC.
55. Ouray McCook Sr. to Martin M. Zollar, 18 October 1960, Plaintiff's Exhibit 187, *Hackford v. First Security Bank*, Nielson Papers, accession 1642, box 45, folder 12.

56. Ouray McCook Sr. to Keith M. Zollar, 18 October 1960, Plaintiff's Exhibit 187, Nielson Papers, accession 1642, box 45, folder 12. See also Frederick M. Haverland to the Commissioner of Indian Affairs, 25 October 1960, Defendant's Exhibit 182, *Hackford v. First Security Bank*, NAFRC.
57. Minutes of Special Meeting of Trust Investment Committee Held at Main at First South Office of First Security Bank of Utah, 13 September 1960, Plaintiff's Exhibit 158, *Hackford v. First Security Bank*, Nielson Papers, accession 1642, box 45, folder 8.
58. Trial Transcript, *Hackford v. First Security Bank*, testimony of Ezilda Hendricks, 28 November 1979, 477–79, Nielson Papers, accession 1642, box 34, folder 1.
59. Minutes of Special Meeting of Trust Investment Committee Held at Main at First South Office of First Security Bank of Utah, 22 September 1960, Plaintiff's Exhibit 165, *Hackford v. First Security Bank*, Nielson Papers, accession 1642, box 45, folder 9.
60. Stipulation in the Matter of the Voluntary Dissolution of the Rock Creek Cattle Company, Civil no. 4027, and Antelope Sheep Range Company, Civil no. 4028, 12 September 1966; and Minute Entry, Voluntary Dissolution of Two Corporations, Civil nos. 4027–28, 10 October 1966; Plaintiff's Exhibits 282, 283, *Hackford v. First Security Bank*, Nielson Papers, accession 1642, box 41, folders 282–83.
61. *Federal Register*, 26 August 1961, vol. 26, no. 165, p. 8042.
62. Nielson's account contains a detailed and documented description of the fraudulent banking activities connected with the sale of UDC stock. See Nielson, *The Dispossessed*, 166–83.
63. Nielson, *The Dispossessed*, 219–24.
64. Nielson, *The Dispossessed*, 196.

8. Termination and the Persistence of Identity

1. Barbara Sutteer, speaking at the Second Session, Affiliated Ute Citizens Annual Meeting, Roosevelt UT, 29 May 1999. Personal notes in author's possession.
2. Author interview with Sonny Van, 5 August 1998, Ballard UT.
3. Author interview with Charles ("Smiley") Denver, 6 August 1998, Roosevelt UT.
4. Author interview with Hackford, Murdock, Christensen, Chapoose, and Felter.

5. Perhaps as a way of sorting out the complexities, Nielson penned a chronicle of these events that evolved through several drafts and finally emerged in print as *The Dispossessed: Cultural Genocide of the Mixed-Blood Utes, an Advocate's Chronicle.*
6. Nielson, *The Dispossessed*, 212–30.
7. John S. Boyden, Amicus Curiae brief to the U.S. Supreme Court in *Affiliated Ute Citizens v. United States*, 27 August 1971, Nielson Papers, box 25, folder 3.
8. Nielson, *The Dispossessed*, 237.
9. See, e.g., AUC Resolutions 58-05 and 58-06, adopted 1 November 1958, which provide only for the organization of the UDC. Despite these efforts, the AUC board continued to meet and conduct business on 5 January 1959 and passed resolution no. 59-08 on 7 January 1959. Plaintiff's Exhibit 165, *Hackford v. First Security Bank*, Nielson Papers, accession 1642, box 40.
10. Nielson, *The Dispossessed*, 239–41.
11. Getches et al., *Cases and Materials on Federal Indian Law*, 220.
12. Nielson, *The Dispossessed*, 242.
13. "Mixed Bloods Seek Recognition, New Role in Tribe; Mixed-blood Indians Seek Reinstatement in Ute Tribe," *Salt Lake Tribune*, 1 August 1993.
14. Boyden, Amicus Curiae brief.
15. Author interview with Chris Denver, 6 August 1998, Roosevelt UT.
16. "Position Statement of the Ute Distribution Corporation" filed with Assistant Secretary of the Interior Kevin Gover, 5 August 1998. Copy in author's possession.
17. "Petition to Intervene" filed by Dora Van, in *Ute Indian Tribe v. State of Utah*, case no. 75-CV-408-J, 15 October 1997, 6. Copy in author's possession.
18. Van to Inouye, 15 July 1998. Copy in author's possession.
19. Cornell and Hartmann, *Ethnicity and Race*, 95.
20. Second Session, Affiliated Ute Citizens Annual Meeting, 29 May 1999. The final phrase was uttered by Darrell LaRose, speaking at the same meeting. Personal notes in author's possession.
21. See, e.g., the formulation applied by Cornell and Hartmann in *Ethnicity and Race*, 85.
22. Forbes, "Manipulation of Race, Caste, and Identity," 42.
23. Gans, "Symbolic Ethnicity," 15.
24. Omi and Winant, *Racial Formation*, 68.

25. Hall, Hall, and McGrew, *Modernity and Its Futures*, 257.
26. Superintendent David Allison to Dora Van, 18 October 1996. Copy in author's possession.
27. Meyer, "American Indian Blood Quantum Requirements," 241–42.
28. John H. Bodley, *Cultural Anthropology: Tribes, States, and the Global System* (Mountain View CA: Mayfield, 1997), 25.
29. Nagel, *American Indian Ethnic Renewal* 242–46.
30. Pavel, Sanchez, and Machamer, "Ethnic Fraud," 48.
31. Hagan, "Full Blood, Mixed Blood, Generic, and Ersatz."
32. Deloria, "Comfortable Fictions," 69.
33. Wahrhaftig, "Anti-Poverty Exploration" and "Community and the Caretakers."
34. For a discussion of *Winters* and related cases buttressing the right of tribes to change over time, such as *Arizona v. California I* (1963) and *Washington v. Washington State Commercial Passenger Fishing Ass'n* (1979), see C. F. Wilkinson, *American Indians, Time, and the Law*, 68–75.
35. U.S. Code 25 §83.7 (c).
36. Cornell and Hartmann, *Ethnicity and Race*, 89–90.
37. Charles ("Smiley") Denver interview.
38. Author interview with Keith Burdick, 9 August 1998, Ephraim UT.
39. U.S. Code 25 §83.7 (g).
40. U.S. Code 25 §83.2 (d).
41. Getches et al., *Cases and Materials on Federal Indian Law*, 220.
42. Franklin C. Salisbury to Commissioner Glenn Emmons, 30 November 1956. Plaintiff's Exhibit 165, *Hackford v. First Security Bank*, Nielson Papers, accession 1642, box 40.
43. C. F. Wilkinson, *American Indians, Time, and the Law*, 77.
44. Cornell and Hartmann, *Ethnicity and Race*, 94.
45. "Hatch Bill: Restore Tax Status of Mixed-blood Utes," *Salt Lake Tribune*, 1 July 1994.
46. "Notes on People; Premature Publicity for Congressman's Complaint; He Tried to Be Prudent," *New York Times*, 12 April 1982.
47. "Notes on People."
48. Deposition of Lacee Alan Harris, 4 March 1986, *Miera v. First Security Bank*, Nielson Papers, accession 1642, box 28, folder 4.
49. Murdock interview.
50. Van interview.
51. Charles ("Smiley") Denver interview.

52. Chris Denver interview.
53. Richard Curry interview.
54. Several interviewees (Chris Denver, Sonny Van, and Oranna Felter, among others) told of repeated encounters with young members of the tribe who insisted that the mixed-bloods "asked to be terminated."
55. Murdock interview.
56. Chapoose interview.
57. Hackford interview.

Conclusion

1. Final Report of the Bureau of Indian Services, Extension Division, University of Utah, July 1961. Plaintiff's Exhibit 413, *Hackford v. First Security Bank*, Nielson Papers, accession 1642, box 42.
2. Ronald L. Holt, "Beneath These Red Cliffs: The Utah Paiutes and Paternalistic Dependency" (Ph.D. diss., University of Utah, 1987), 137.
3. For a comprehensive treatment of Watkins's role as the chief commissioner of the ICC, see the relevant chapters in Rosenthal, *Their Day in Court*.
4. Burdick interview.
5. Cornell and Hartmann, *Ethnicity and Race*, 86.

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INDEX

Acheson, Dean, 45
Affiliated Ute Citizens of the State of Utah (AUC): board of directors of, 106, 169, 241; conflict of Ute Distribution Corporation with, 206–8; constitution ratified by, 192, 212; creation of, 168–70; legitimacy of, 219–20, 224–25; recreation of, as an entity, 206, 211
Affiliated Ute Citizens v. United States, 206–7
Allen, Preston V., 156, 189, 206
American Academy of Political and Social Science, 6, 46
American Jewish Congress, 80
ancestry, 135, 137–38, 213–15
Antelope Sheep Range Company, 194, 200
Appah, Lawrence, 56
Armstrong, O. K., 82
assimilation, 5, 9–10, 17–19, 21, 25, 46, 64, 73, 79, 138, 147, 172, 216, 236, 238
Association on American Indian Affairs (AAIA), 60, 108
Atlantic Monthly (magazine), 60
Atwine, Sidney, 175
Atwyne, Charlie, 155
authenticity, 224

Ballard, Utah, 220
Bannock (tribe), 53
Barth, Frederick, 16
Beatty, Willard H., 79
Bennett, Robert L.: assistance to full-bloods by, 177–79; attendance at NCAI conference of, 143; as author of termination legislation, 261 n.2; background and education of, 144; motives and beliefs of, 12, 14, 143–44; plan to partition assets by, 146, 159–60, 163; radio address by, 140–41; role of, in termination of mixed-bloods, 132–35, 145–46, 151–52, 154–57; work for BIA by, 92, 94, 98–99, 126–27, 129–30, 138–41, 147–50, 172–73
Benson, Ezra Taft, 32, 34
Benson, Steve, 34
Berry, E. Y., 22, 196

BIA. *See* Bureau of Indian Affairs (BIA)
Big Ute Case, 48, 51–52, 57, 60
Blackfeet (tribe), 53, 79
Black Hawk (Autenquer), 133
Black Hawk War (Utah), 22
Black Power movement, 19
blood quantum: as membership criterion, 15, 71, 136, 162, 164, 213, 220–21, 232; origins of, 136, 214; theory of, 137–38, 214
Board of Directors, 106, 241. *See also* Affiliated Ute Citizens of the State of Utah (AUC)
Bonnin, Raymond T., 50
Book of Mormon, 13, 30–31, 35–37, 60, 144, 229
Bosone, Reva Beck, 75–78, 82, 94
Bosone Bill, 77
Bottle Hollow Resort, 208
Boyden, John S.: as ally of Watkins, 13, 22, 35, 93; as author of asset distribution plan, 183–89, 192, 196–97, 211–12; as author of Partition Act, 13, 157–58; conflict of interest of, 159, 167, 169–70, 181, 189, 197, 206, 277 n.2; family biography of, 196; Indian law practice of, 22, 68; as legal counsel for mixed-blood Utes, 159, 170, 181, 184–85, 189; as legal counsel for Utah Paiutes, 108–9, 112–16, 122–23, 141; as legal counsel for Ute tribe, 94, 97, 197–98, 200–202, 206–8; as member of Wilkinson, Cragun, and Barker, 112, 167, 264 n.36, 274 n.43; role of, in partitioning Ute tribe, 152, 154–56, 160–63, 175, 177, 183; views of, on termination, 196
Brigham Young Academy, 23
Brigham Young University, 12–13, 23, 58, 61, 64, 93, 119–20, 255 n.41
Brigham Young University Lee Library, xvii
Brodie, Fawn M., 33
Brown, Jennifer S. H., 3, 136
Brunot Agreement (1874), 51
Bumgarner, Elizabeth Curry, 71, 88, 149–50, 189, 231
Burdick, Keith, xv, 222, 240–41
Burdick, Richard, 241
Bureau of Indian Affairs (BIA): Branch of Acknowledgment and Research (BAR) of, 213; creation of area offices for, 80; Division of Program of, 83, 97, 124, 126–27, 140, 143, 157, 159, 172; Division of Tribal Relations of, 79; Phoenix Area Office of, 86, 159

Cedar band of Paiutes, 104, 116, 119
Cedar City, Utah, 1, 29, 109, 113, 121–22
Census Bureau, 213
The Chaplain (journal), 63
Chapman, Oscar L., 69, 76, 80
Chapoose, Conner, 160
Chapoose, Maxie, 232
Chavez, Dennis, 38, 40
Chippewas, Turtle Mountain. *See* Turtle Mountain Chippewas
Church News (newspaper), 63
Clark, Tony, xvii
Clifton, James A., 17–18, 136, 138, 216
Coalition of Native Americans, 226
Code of Federal Regulations (CFR), 218, 225
Cohen, Felix S., 5, 7–8, 21, 50, 55–56, 60, 80; *Handbook of Federal Indian Law*, 55
Cold War, 5, 9, 11, 21
Collier, John, 4–7, 37, 76–78, 80, 82, 122, 263 n.30
Colorado judgment, 64, 72, 74, 85, 86,

93–94, 124, 129, 132, 138–39, 145, 152, 176, 180, 237
Colton, Hugh, 198–99
Columbia Law School, 23
Commission on Organization of the Executive Branch, 44–45
Committee on Interior and Insular Affairs, 30, 83, 113, 115, 117
Committee on Public Lands, 30
Communism, 21, 47
Consolidated Ute Agency, 172
Cordon, Guy, 115, 117
Cornelius, Carl, 178
Cornell, Stephen, 17, 209
Court of Claims (United States), 48, 52–54, 61, 207, 237
Crow, John O., 169
Cuch, Jason, 188
Cuch, Russell, 160
Cumumba Utes, 133. *See also* Weber Utes
Curry, Oran, 67, 130, 158, 230
Curry, Reginald O. "Rex": background of, 13, 71, 93, 230; role of, in division of assets, 185, 189, 195; role of, in termination, 14, 87, 99–100, 139–42, 145–46, 155, 161–64, 166; as tribal chairman, 12, 67, 69, 89, 94–99, 124–25, 175, 197; Uintah Basin Indian Day speech by, 93

Dawes Rolls of 1907, 213
Deer Creek Reservoir Project, 26
Denver, Charles "Smiley," 205, 222, 229
Denver, Chris, 208, 229
Department of Interior (United States), 53, 55, 73, 115, 118, 162–63, 175, 208, 226
Department of Justice (United States), 54, 66, 68
Deseret News (newspaper), 63
Dillman, Ray E., 166
division of assets, 15, 156, 160, 177, 182, 183, 185, 189, 190, 192; of timber, 187
Donovan, James G., 112
Drinnon, Richard, 257 n.11
Duchesne, Utah, 220

Eisenhower, Dwight D., 29, 32, 35, 81, 98, 120, 126, 172
Emancipation Proclamation, 19
Emmons, Glenn L.: as Commissioner of Indian Affairs, 98, 115, 129, 157, 160, 191, 195, 198–99, 223, 236; philosophy of, 4, 6–7, 12; testimony of, 1, 109
Ernst, Roger, 192
ethnic fraud, 215
ethnicity, 16–18, 20, 32, 137–38, 221, 225
ethnogenesis, 211

Federal Register, 122, 202, 204
federal trust protection (standards), 218
federal trust relationship, 8, 12, 16, 56, 75, 80, 144, 202, 213, 216–17, 224
Felter, Oranna Bumgarner, 207, 240
First Presidency of the Mormon Church, 119
First Security Bank of Utah, 201–2, 206–7
Fixico, Donald, 9–10, 12, 15, 238
Flathead tribe, 102
Fleming, Darrell, 198
Forbes, Jack, 211
Forrestal, James, 45
Fort Duchesne, Utah, 25, 90, 99, 121, 128, 146, 149, 152, 155, 157, 178, 242
Foxwoods Casino, 242
Frankfurter, Felix, 50

Frechette, James G., 56
full-blood Program Committee. *See* full-blood Utes
full-blood Utes: decision to divide assets of, 145–48, 152–53, 156–61; long-range program development for, 98, 160, 170, 172, 174–76; membership definitions for, 162, 165–66, 222; opposition to mixed-bloods by, 92, 124, 131, 139, 148; participation in tribal programs by, 92; partitioning process of, 188, 192; Program Committee for, 170–71, 173; threat of termination to, 100, 147, 149, 163, 178, 191, 229

Garry, Joseph R., 111
Gelvin, Ralph M., 126, 131, 159
Geneva Steel, 27
genocide, 5, 19
George Washington University, 12, 50, 94
Gilmore, Harry W., 107–10, 115–16, 121, 155, 160, 175
Grand (River), 51
Grande Ronde, Oregon, 95
Granger, Walter K., 28–29
Greenwood, W. Barton, 98, 117, 131, 166

Haas, Theodore H., 79
Hackford, Calvin, 205, 233
Hackford, Sarah, 125–27, 169
Hagan, William T., 216
Hall, Stuart, 212
Handbook of Federal Indian Law (Cohen), 55
Harrington, Charles H., 106–7
Harris, Albert H., 149–50, 158, 160, 185, 227
Harris, Henry E., 134
Harris, Lacee Alan, 227, 232
Harrison, William H., 101
Hartmann, Douglas, 209, 221, 224, 241
Hatch, Orrin, 226
Haverland, Frederick W., 128–29, 169, 187, 199–200
Hawkins, Carl, 153
Heber Valley, 22
Hicks, Erma O., 70
Highwater, Jamake, 216
Hill Creek Extension, 187–89
Holmes, Norman, 104
Holt, Ronald L., 235
Hoover, Herbert, 45
Hoover Commission, 44–45
Hopi, 22, 41–42
Hotel Newhouse, 106–7, 242
House Committee on Indian Affairs, 54, 55
House Committee on Interior and Insular Affairs, 83
House Concurrent Resolution No. 108, 101–2, 140–41
House Joint Resolution No. 698, 83, 102–3
House Resolution No. 490, 76
Hughes, Charles Evans, 50
Hughes, Schurman, and Dwight (law firm), 50

Ignacio, Colorado, 150, 172
Indian Arts and Crafts Act, 213
Indian Claims Commission, 39, 41, 54–56, 60–61, 66, 111, 122–23, 165, 193–94, 202, 238
Indian Claims Commission Act, 56, 60, 237
Indian freedom program. *See* Watkins, Arthur V.
Indian Health Service, 213
Indian identity: definitions of, 137–38, 212–15, 217–18; effects of termination on, 15–16, 210, 239; of mixed-blood peoples, 205, 227, 229–30, 241; as political question, 20

Indian New Deal. *See* Indian Reorganization Act
Indian Peaks Paiutes, 1, 106–9, 113–17, 121–22
Indian Reorganization Act, 6–9, 17, 39, 47–49, 65, 69–70, 79, 121–22, 125, 127, 137, 139. *See also* Wheeler-Howard Act
Inouye, Daniel K., 209

Jack, Wallace, 146
Jackson, Boyd J., 56
Jackson, Henry M., 101
Jackson, Robert H., 54
Jake, Clifford, 106
Jax, Garth, 157
Jenkins, Homer B., 150, 157, 159, 160, 173
John Birch Society, 32
Johnson, Arthur, 104

Kaibab Paiutes, 106
Kanosh band, 1, 104, 106–7, 110–11, 116–17, 120–22
Kanosh Tribal Council, 116
Kaw Reserve, 17
Kimball, Spencer W., 63
Kirk, Frank W., 125, 127, 129, 216
KJAM radio, 125, 140
Klamaths, 3, 16, 61, 102
Koosharem band, 104
Kwiumpats band, 133

La Farge, Oliver, 5, 7, 46, 60–61, 118
Lamanites, 36–37, 229. *See also* Book of Mormon
Langer, William, 10–11, 37–40, 42
League of North American Indians, 125, 128
Lee, H. Rex, 13, 22, 77, 82, 96, 98, 99, 116, 128
Lesser, Alexander, 108, 120
Lewis, Orme, 98, 108, 115, 117, 126, 162
Long Lance, Silvester, 216
Los Angeles Herald Express (newspaper), 63

Magnuson, Warren G., 29
Mashantucket Pequot tribe, 242
McCarthy, Joseph (Senator), 15
McConkie, Bruce R., 34–36
McKay, David O., 31–33, 35, 249 n.33
McKay, Douglas, 107
McKinley, Francis: beliefs of, 12; NCAI conference attendance by, 14, 142–44; role of, in dividing Ute tribe, 125, 144–52, 155, 163, 175, 178; as tribal coordinator, 12, 85–89, 94–96, 99–100, 139–42
Meeker Massacre, 47, 51
Meira v. First Security Bank, 207
melting pot, 19
membership: attempts to regain, by mixed-blood peoples, 208–10; attempts to restrict, of Ute rolls, 69–71, 73, 130–35, 161–66, 232; criteria for, 18, 121, 130–31, 136–39, 161, 195, 213–15, 219, 224; Partition Act division of, 156, 161, 171, 180; as political issue, 124; rolls of, 182, 215, 219
Menominee Business Committee, 56
Menominee tribe, 3, 16, 41, 53, 61, 102–13, 140–41, 195, 210, 223, 235, 239
Metcalf, Lee, 196
Meyer, Melissa L., 136, 214
minority rights, 240
minors' shares, 201
Mission Indian Federation, 40
mixed-blood peoples, 3, 135–36
mixed-blood Utes: as Affiliated Ute Citizens, 168, 185, 209; attempts to restrict membership of, 71,

mixed-blood Utes (*cont.*)
129–30, 139, 161–63, 166, 195; as candidates for federal recognition, 225–27, 242–43; conflict with UDC of, 206–9; controversy in Ute tribe of, 69, 88–89, 98, 124, 126–27, 139, 142, 148; definition of, 162; dissolution of assets of, 196–203, 234; identity as Indians of, 16, 19, 210–13, 216–17, 219–25, 227–32, 240–41; legal representation for, 159, 166–70, 181; litigation by, 205–7; opposition to Indian Reorganization Act by, 125, 232–33; opposition to partition process by, 148–49, 151–52, 157–58; origins of, 3, 68–69, 71–72, 132–35; participation in tribal programs by, 92, 124, 126, 132, 142, 148, 175; role of, in partitioning process, 145–46, 148, 151–52, 154, 181–95; as targets for termination, 3–4, 14–15, 100, 145–47, 151, 155–57, 161–64, 204; as tribal faction, 72, 92, 145–46
Mormon Doctrine (book), 13, 34
Mormonism, 8, 21, 32, 65, 67, 71, 91
Mormons (Latter-day Saints): church leadership of, 58, 60, 119–20, 201; doctrinal shifts of, 248 n.27; doctrines about Indians of, 7, 13–14, 36–37, 45, 60–61, 63–64, 93, 144, 224–25, 229, 235–36; government persecution of, 31; homogeneity of, 34–36; policy influence by, 13, 26, 28–29, 48, 75, 119–20, 122, 144, 230, 243; racial doctrines of, 249 n.36; theology and beliefs of, 23, 31–33, 36–37, 225
Mormon theology. *See* Mormons (Latter-day Saints)
Morris, George C., 106, 107
Moss, Frank E., 196
Moyle, Walter G., 50–51
Murdock, Abe, 28
Murdock, Lula, 88, 150
Murray, Julius, 56, 88, 126, 146
Myer, Dillon S., 4–6, 22, 73, 78–81, 86–87, 96–98, 103, 114, 211, 236

Nagel, Joane, 17, 214
National Congress of American Indians, 3, 14, 50, 60, 100, 111; February 1954 emergency conference of, 142–44
Navajo, 41–42, 45–46, 69, 133, 166, 217, 220, 226
Navajo-Hopi emergency relief bill, 42
Nelson, L. L., 155, 174
Nephites, 36. *See also* Book of Mormon
New Deal, 4, 62, 75, 78, 82
New York University, 23
Nielson, Parker M., xvii, 205, 207
Northern Ute Indians: Colorado judgment controversy effects on, 65–67, 72, 89–90, 124, 145; as full-blood Uintahs, 170, 174–76; as targets for termination, 100, 147–49, 155–56, 161, 204, 231–32, 242. *See also* Uintah band; Uncompahgre band; Ute tribe of the Uintah and Ouray Reservation; Whiteriver band
Northwestern Bands of Shoshone Indians v. the United States, 53, 56
Northwest Shoshone, 102

Ogden, Utah, 226
Oklahoma Cherokees, 213, 216
Oklahoma City, 241
Omi, Michael, 20, 212
Orem, Utah, 26–28
Orem Chamber of Commerce, 26–28
Orem Community Church, 27

Orem-Geneva Times (newspaper), 28, 35
Ostling, Joan K., 34
Ostling, Richard N., 34
Ouray (Chief), 48

Paiute Restoration Act, 123, 210
Paiute termination legislation, 112, 113, 115–16, 120, 122, 141, 144
Palmer, William, 104
Pawwinnee, 148
per capita payment, 66, 69, 86–92, 115, 123, 126–27, 130, 139, 154, 171, 173–75, 185, 214
Peterson, Helen, 50, 60
Philp, Kenneth R., 9–12, 238
Phoenix Area Office. *See* Bureau of Indian Affairs (BIA)
post-termination Indians, 210, 227
Pound, Roscoe, 50
Prairie Potawatomi, 18
private treaty provision, 196–99
Provinse, John H., 44, 79
Provo, Utah, 23, 61, 217, 220
Provo River Water Users Association, 26
Public Law No. 671, 15, 165, 172. *See also* Ute Partition Act

Quorum of the Twelve Apostles, 32–33, 63. *See also* Mormons (Latter-day Saints)

race: centrality of, in America, 18–19; Indians as categories of, 136–37; Mormon doctrine of, 16, 35, 45, 225, 235–36; political constructions of, 20, 212, 214, 239–40, 242; political doctrines of, 19, 225
racial and ethnic formation, 16, 19
racial dualism, 3, 136
racism, 6–7, 46
range corporations, 194–98, 202
range land, 91, 114, 186–87, 201, 205
Red Earth Festival, 241
Red Power movement, 20
Reed, Shirley, 209
Republican Party, 23
Reyos v. First Security Bank, 206–7
right of first refusal (stock purchases), 198–200
Ritter, Willis, 35
Robertson, Charles R., 55
Rock Creek Cattle Corporation, 187, 194–95, 200, 208
Roosevelt, Franklin D., 29, 53, 62, 122
Roosevelt, Utah, 93, 166, 202, 220, 230

Salt Lake City, Utah, 7, 23, 29, 46, 63, 75, 106–7, 112, 155, 217
Salt Lake Tribune (newspaper), 96
Santa Clara Pueblo v. Martinez, 215
Select Committee on Indian Affairs, 209
self-identification (tribal), 19, 214–15, 228, 229
Sells, Cato, 25
Senate Civil Service Committee, 10, 37, 39–41
Senate Committee on Interior and Insular Affairs, 30, 113, 115, 117
Senate Subcommittee on Indian Affairs, 3, 11, 21, 30, 37, 39–41, 48, 61, 87, 90, 102, 117, 143, 235, 242
seven-year termination program: of Hopi-Navajo, 42–43; of Ute, 86–87, 90, 96–99, 142–43
"share and share alike" agreement. *See* Wilkinson, Ernest L.
Sharon Stake, 26
Shavanaux, Connie, 175
Shipps, Jan, 31–32
Shivwits band, 1, 104, 122. *See also* Utah Paiutes

Shoshones, 1, 53–54, 56, 69, 72, 101–2, 111–13, 118, 128, 133–34, 149, 220
Silletz Indian agency, 95
Skull Valley band of Shoshone Indians, 102
Smith, Joseph, 33, 37
Smith, Joseph Fielding, 33
Snipp, C. Matthew, 137
social construction of identity, 20, 210–12, 232, 240
Soil Conservation Service, 111
Southern Paiutes, 1, 102, 104, 122, 133. *See also* Utah Paiutes
Southern Paiute tribe of Nevada, 111
Spanish Fork, Utah, 217
Spanish Fork claim, 132, 153, 193
Spanish Fork Treaty of 1865, 47, 133, 194, 218, 234, 240
Special Committee of Independent Ute Indians, 190
Sprouse, Margaret, 200–201
stock certificates, 194, 200, 202
Stone, Forrest R., 43–44, 70, 86, 88, 90, 95–96, 114, 130
Sun Dance, 25
Supreme Court (United States), 19, 53–54, 129, 206–8, 215, 217, 223
Sutteer, Barbara, 205
symbolic ethnicity, 212

Tabbee, John, 142, 147–48, 178
Tenth Circuit Court of Appeals, 206–7
ten-year program, 174, 190–91
termination: effects on Utah Indians of, 49, 90, 96, 98–118, 162–64, 234–35; historical interpretations of, 8–13; as identity question, 16–20, 204–5, 210–33, 239–42; mixed-blood, evolution of, 126, 130, 142–47, 154–57; opposition to, 6–7, 46, 60, 122, 195–96; policy origins of, 4–8, 20–22, 37–46, 235–39; as purpose of mixed-blood program, 166, 169, 178, 191; Ute, summary of, 13–16, 179–80; as will of Congress, 74–77, 81–83, 101–2, 108, 140–41; withdrawal programming for, 85–86. *See also* Watkins, Arthur V.
three-year rehabilitation program, 74, 87, 90–94, 97, 99, 132, 142, 147–48, 154
Timikin, Jimmy, 117
Tom-Pee-Saw, Frank. *See* Kirk, Frank W.
Tribal Credit Committee (Ute tribe), 91
tribal factionalism, 17–18, 195
tribal membership. *See* membership
Tribal Resolution No. 3, 67
tribal rolls, 71, 121, 165, 181, 184, 211, 219, 241. *See also* membership
True Utes, 190, 192
Truman Administration, 9, 30, 62, 81
trust relationship, 8, 12, 16, 56, 75, 80, 144, 202, 213, 216–17, 224
Tucson, Arizona, 24
Turtle Mountain Chippewas, 41, 250 n.48
Twohy, Julius, 191–92

Uintah and Ouray Reservation: agency personnel of, 48–49, 52, 97, 144, 174, 212; allotment for, 24, 246–47 n.4; description of, 83; Indian Claims Commission cases for, 193–94; as target of termination, 22, 41, 83; treaty provisions for, 126; Watkins family history with, 23, 25, 30, 37, 45; Watkins visit to, 43–44
Uintah band: claims cases for, 66, 193–94, 203; mixed-blood members of, 14–15, 68–69, 71, 90, 129, 183, 211; opposition to tribal government by, 46–47, 126–27, 166, 190, 232–33; original treaty band of,

47, 234; origins of, 3, 48, 51, 132–33, 135, 220, 232, 241; physical assets of, 85, 183, 193, 203, 213; relations of other bands to, 47–48, 132, 134, 146
Uintah Basin Indian Day, 93
Uintah Indian School, 85
Uintah Valley, 22–23, 25, 45, 47, 51, 83, 91, 93, 133, 187, 210, 216, 232, 234
Uncompahgre band: Colorado judgment award to, 58, 65–66, 145; Colorado origins of, 47–48, 51, 232; full-blood composition of, 135; opposition to mixed-bloods by, 14, 132, 138, 142, 146, 204; opposition to sharing judgment funds by, 65–67, 129, 139, 152, 176; participation in long-range program by, 170; relations with Uintah Utes of, 48; support for dividing tribe by, 142–43, 145–48
United Auto Workers, 80
United States v. Felter, 207
U.S. District Court of Utah, 35, 205, 207
Utah County, 26
Utah Paiutes: as ancestors of mixed-blood Utes, 133–34; Cedar band of, 104, 116, 118–19; consent issue of, 102, 104, 106–10, 144, 237, 242; Indian Peaks band of, 1, 103, 106, 108, 115–16, 121–22; intermarriage with Utes by, 133–34; Kaibab band of, 106; Kanosh band of, 1, 104, 106, 120, 122; Koosharem band of, 1, 104, 117, 120, 122; Kwiumpats band of, 133; post-termination status of, 122–23, 235; restoration of reservation of, 266 n.69; Shivwits band of, 1, 104, 122; termination hearings of, 102, 107, 110–13, 118, 236
Ute Agreement of 1880, 51, 57
Ute Corporate Charter, 97–98, 199
Ute General Council meetings: 29 May 1950, 66–68; 11 February 1951, 90; 10 April 1953, 125–26; 26 May 1953, 129–31; 31 March 1954, 14–51, 150–53, 155–59, 170, 242; 24 May 1955, 178–79
Ute Indian Affairs Organization, 88–89
Ute Indian blood, 69–71, 131, 135, 151, 156, 161–62, 165, 195, 223
Ute Jurisdictional Act, 53, 58, 87
Ute lands, 52, 53, 57, 217
Ute Mountain Utes, 58, 68, 95
Ute Partition Act: as amended by P. L. 920, 165; creation of mixed-blood group by, 184; definition of tribal membership in, 164–65, 195, 223; division of assets by, 15, 164, 168, 171, 175, 182–83; hearings and testimony for, 177–78; legislative intent of, 166, 172, 191, 197; as passed by Congress, 165, 168; preparation of membership rolls for, 181–82; programming provisions of, 172, 174–75; tribal opposition to, 176–77, 192; as written by Boyden, 13, 168. *See also* Public Law No. 671
Ute Planning Division (Ute tribe), 91
Ute Treaty of 1868, 51
Ute Tribal Business Committee: as led by Curry, 12–13, 93–94; membership ordinances of, 69–70, 131, 165, 195; rehabilitation programs of, 86–91, 98, 124, 141, 150; role of, in partitioning, 177, 187, 195, 197–200; role of, in termination, 87, 99, 160
Ute tribe of the Uintah and Ouray Reservation: as split between mixed and full-bloods, 68–69, 88–89, 92, 98, 124, 126–27, 139, 142, 148; Tribal Credit Committee of, 91;

Ute tribe of the Uintah and Ouray Reservation (*cont.*)
tribal planning board of, 140–42, 150–51, 163, 174, 176; Ute Planning Division of, 85–88, 91–92, 124. *See also* Northern Ute Indians; Ute General Council meetings; Ute Tribal Business Committee

Van, Dora, 208–9, 240
Van, Sonny, 205, 228–29
The Vernal Express (newspaper), 24–25, 45
Vernal, Utah, 22–24

Wahrhaftig, Albert, 216
wardship status, 6, 46, 75, 82, 217–18
Wartime Relocation Authority, 78–79
Wasatch Front, 26, 47, 217, 220
Washakie band of Shoshone Indians, 1, 102
Watkins, Andrea Rich, 24
Watkins, Arthur V.: as advocate of termination, 3, 6, 10; as chair of Senate Subcommittee on Indian Affairs, 3, 10, 30, 40–43, 61, 68, 77–78, 81, 95–96, 235–37; as community leader, 24–26; congressional campaigns of, 26–29; ethnocentricity of, 7, 13, 15–16, 211, 238–39; as Indian Claims Commissioner, 238; Indian freedom program of, 6, 19, 46, 49, 192; and Kirk, Frank W., 127–29; as newspaper editor, 247 n.7; religious beliefs of, concerning Indians, 13, 16, 31–32, 35, 37, 45–46, 193, 235–36; role of, in creation of Partition Act, 157–65, 184; role of, in Paiute termination, 102, 104–13, 116, 119–22; role of, in Ute termination, 14–15, 21, 22, 48, 87, 90, 99–100, 124, 130, 139–51, 178–79; Uintah and Ouray visit by, 43–44; youth of, 22–24
Watt, James, 225
Waunzitz, Waubin, 155–56
Weber Utes, 133. *See also* Cumumba Utes
Western Shoshone, 53
Wheeler, Burton K., 11
Wheeler-Howard Act, 82, 192. *See also* Indian Reorganization Act
Whiteriver band: co-existence with Uintahs by, 47; Colorado judgment award to, 65–67, 145; Colorado origins of, 47, 51, 232; effects of Meeker Massacre on, 51; full-blood composition of, 135; opposition to mixed-bloods by, 14, 68, 132, 146; opposition to sharing judgment funds by, 67, 129; opposition to tribal government by, 190; participation in long-range program by, 170
Wilkinson, Charles F., 224
Wilkinson, Ernest L.: church service by, 253 n.24; Indian Claims Commission cases of, 193–94; Indian law practice of, 50–51, 53–54, 254 n.33; Indian rights advocacy by, 60, 117–19; political beliefs of, 62; as president of Brigham Young University, 58, 61, 64; religious beliefs of, concerning Indians, 63–64, 237; restraint of marriage issue by, 134; role of, in Big Ute Case, 50–53, 57–58; role of, in Colorado judgment, 58–59; role of, in creating "share and share alike" agreement, 65–68, 70–71; role of, in General Council meeting of 31 March 1954, 154–56, 158; role of, in Indian Claims Commission creation, 54–56, 60; views of, on Pai-

ute termination, 112, 119–20;
views of, on Ute Partition Act, 152–53, 158–59, 167
Wilkinson, Glen A., 61, 96, 108, 111–13, 119, 159, 167
Winant, Howard, 20, 212
Winters v. United States, 217
withdrawal programming, 83, 85–86. *See also* termination
Wopsock, Henry, 175
Workman, Arthur, 169, 188
World War II, 9

Yalta Conference, 30

Zimmerman, William Jr., 4, 10, 37–41, 43–44, 79, 103, 237

that led to the termination of the mixed-blood Utes' tribal status and shows how and why this particular group of Native Americans was never formally recognized as "Indian" again. Their repeated failure to regain their tribal status throws into relief the volatile key issue of identity then and today for full- and mixed-blood Native Americans, the federal government, and the powerful Mormon Church in Utah.

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